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TITLE I. INTRODUCTORY PROVISIONS

Rule 1. Definitions.

As used in these Rules:

(a) The term "court" shall mean the District of Columbia Court of Appeals, unless otherwise specifically described;

(b) The term "clerk" shall mean the Clerk of the District of Columbia Court of Appeals, unless otherwise specifically described;

(c) The term "agency" shall mean the Mayor, as defined by D.C. Code § 1-1502 (1)(A), or any subordinate or independent agency as defined by D.C. Code § 1-1502 (3) through 1-1502 (5);

(d) The terms "appellant" and "appellee" shall be deemed synonymous with petitioner and respondent, respectively;

(e) The terms "appeal" shall mean any proceeding in this court initiated by a notice of appeal, a petition for review, a petition of appeal, or a petition for writ of mandamus or prohibition or for any other extraordinary writ, or a recommendation from the Board on Professional Responsibility for disciplinary action against a member of the Bar; and

(f) The term "counsel" shall be deemed to include any individual party proceeding pro se before this court.

Rule 2. Seal and process.

The seal of this court shall be in the custody of the clerk and shall be used to authenticate all process, orders, and proceedings in the court, and official transcripts thereof, and all other papers or documents requiring authentication. All writs and other process issuing from this court shall be under the seal thereof and be signed by the clerk.

TITLE II. APPEALS FROM JUDGMENTS AND ORDERS OF THE SUPERIOR COURT

Rule 3. Appeal as of right -- How taken.

(a) *Filing the notice of appeal*. An appeal permitted by law as of right from the Superior Court, including an expedited appeal, shall be taken by filing a notice of appeal with the Clerk of the Superior Court within the time allowed by Rule 4. Eight copies of the notice shall be filed. Form 1 is a suggested form of a notice of appeal, but the use of a particular form shall not be required. The notice of appeal shall specify the party or parties taking the appeal and shall designate the judgment, order, or part thereof from which appeal is taken. Filing may be accomplished by mail addressed to the Clerk of the Superior Court; but filing shall not be deemed timely unless the notice is, in fact, received by that clerk within the prescribed time. If a timely notice of appeal is filed by a party, any other party to the proceeding in the Superior Court may file a notice of appeal within the time prescribed by Rule 4. The notice of appeal shall be signed by the individual appellant or by counsel for appellant. If the appellant is a corporation or other entity, the notice shall be signed by counsel.

(b) *Joint or consolidated appeals*. If two or more persons are entitled to appeal from a judgment or order of the Superior Court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal by stipulating to joinder or by filing a joint designation of record or stipulation with the Clerk of the Superior Court, and they shall thereafter proceed on appeal under one consolidated record. Appeals may be consolidated by order of this court upon its own motion or upon motion of a party. When more than one appeal is docketed in this court from the same judgment or order, and a single record on appeal has been prepared containing all the matter designated or agreed upon by the parties, the record shall be docketed in each appeal but shall be maintained in the clerk's file bearing the lowest docket number.

(c) *Duty of the Clerk of the Superior Court*. The Clerk of the Superior Court shall transmit forthwith a copy of the notice of appeal (1) by ordinary mail to the attorneys for all of the parties, or, if a party has no attorney, to the party; and (2) to the clerk of this court. A copy of the docket entries in all cases and of the indictment or information in criminal cases shall be attached to the copy sent to the clerk.

Rule 4. Appeal as of right -- When taken.

(a) *Civil cases*.

(1) Notice of appeal. A notice of appeal in a civil case shall be filed with the Clerk of the Superior Court within thirty days after entry of the judgment or order from which the appeal is taken unless a different time is specified by the provisions of the District of Columbia Code. If a timely notice of appeal is filed by a party, any other party to the proceeding in the Superior Court may file a notice of appeal within fourteen days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this paragraph, whichever period last expires. If a notice of appeal is submitted to this court, the clerk shall note thereon the date of receipt and transmit the notice to the Clerk of the Superior Court. The notice shall be deemed filed in the Superior Court on the date so noted.

(2) Termination of time for filing notice of appeal. The running of the time for filing a notice of appeal is terminated as to all parties by the timely filing, pursuant to the rules of the Superior Court, of any of the following motions: For judgment notwithstanding the verdict; to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; to vacate, alter or amend the order or judgment; for new trial; for reconsideration if authorized by the rules of the Superior Court; and any other motion seeking relief in the nature of the foregoing. The full time for filing a notice of appeal fixed by this section (a) shall begin to run from the entry on the Superior Court docket of an order fully disposing of any of the foregoing motions, except that if any such order is conditioned on acceptance of a remittitur by any party, the time shall begin to run from the date on which a judgment based on acceptance of the remittitur is entered. Any statement accepting or rejecting a remittitur shall be filed in the Superior Court and served on all other parties. Where the rules of the Superior Court provide that the microfilming of a document constitutes its entry on the docket, a judgment or order will be deemed to have been entered, for purpose of calculating the time for noting an appeal, from the date on which it is microfilmed.

(3) Entry of judgment or order. A judgment or order is deemed to be entered when it is entered on the civil docket, including microfilmed entry, by the Clerk of the Superior Court. See Super. Ct. Civ. R. 79 (a). When a judgment or final order is entered or decided out of the presence of the parties and counsel, such judgment or order shall not be considered as having been entered, for the purpose of calculating the time for filing a notice of appeal or any application for the allowance of an appeal under Rule 6, until the fifth day after the Clerk of the Superior Court has made an entry on the docket, including microfilmed entry, reflecting the mailing of notice by that clerk.

(4) Excusable neglect. Upon a showing of excusable neglect, the Superior Court may extend the time for filing the notice of appeal by any party for a period not to exceed thirty days from the expiration of the time otherwise prescribed by paragraph (1). Such an extension may be granted before or after the time otherwise prescribed by paragraph (1) has expired; but, if a request for an extension is made after such time has expired, it shall be made by motion with such notice as the court shall deem appropriate.

(b) *Criminal cases*.

(1) Notice of appeal. A notice of appeal in a criminal case shall be filed with the Clerk of the Superior Court within thirty days after entry of the judgment or order from which the appeal is taken unless a different time is specified by the provisions of the District of Columbia Code. A notice of appeal filed after the announcement of a verdict, decision, sentence, or order but before entry of the judgment or order shall be treated as filed after such entry and on the day thereof. If a notice of appeal filed after a verdict is not followed by the entry of a judgment, the appeal shall be subject to dismissal at any time for lack of jurisdiction. If a notice of appeal is submitted to this court, the clerk shall note thereon the date of receipt and transmit the notice to the Clerk of the Superior Court. The notice shall be deemed filed in the Superior Court on the date so noted.

(2) Termination of time for filing notice of appeal. If a timely motion in arrest of judgment or for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within thirty days after the entry of an order denying the motion. A motion for new trial based on the ground of new discovered evidence will similarly extend the time for appeal from a judgment of conviction if the motion is made before, or within thirty days after, entry of the judgment.

(3) Excusable neglect. Upon a showing of excusable neglect the Superior Court may, before or after the time prescribed by paragraph (1) has expired, with or without motion and notice, extend the time for filing a notice of appeal for a period not to exceed thirty days from the expiration of the time otherwise prescribed by paragraph (1).

(4) Entry of judgment or order. A judgment or order is deemed to be entered within the meaning of this subdivision when it is entered on the criminal docket by the Clerk of the Superior Court. When a judgment or final order is entered or decided out of the presence of the parties and counsel, and without previous notice to them of the court's decision, such judgment or order shall not be considered as having been entered, or the purpose of calculating the time for filing a notice of appeal, until the fifth day after the Clerk of the Superior Court has made an entry on the criminal case jacket reflecting the mailing of notice.

(c) *Expedited appeals*.

(Including but not limited to Bail Appeals, § 23-1324; Pretrial Detention Appeals, § 23-1324; Juvenile Interlocutory Appeals, § 16-2328; Government Appeals from Intra-Trial Orders, § 23-104; Extradition Appeals, § 23-704; Public Service Commission Appeals, D.C. Code § 43-905.)

(1) Counsel for appellant shall promptly file the notice of appeal with the Clerk of the Superior Court and at that time shall advise the clerk of this court and opposing counsel in person or by telephone of the forthcoming appeal.

(2) Counsel for appellant shall forthwith advise the Clerk of the Superior Court and opposing counsel of the transcript, pleadings and documents which are deemed necessary for inclusion in the record on appeal. The record shall include the notice of appeal and a copy of the order appealed from or the docket entry with respect thereto if there is no written order. Any written opinion, findings of fact, or conclusions of law shall also be included in the record.

(3) Opposing counsel shall forthwith advise the Clerk of the Superior Court of any additional transcript, pleadings, and documents deemed necessary for inclusion in the record on appeal.

(4) The Clerk of the Superior Court shall forthwith transmit the record to the clerk of this court.

(5) Counsel for appellant shall make advance arrangements to pay the necessary fees, if required, to the Clerk of the Superior Court and to the clerk of this court.

(6) Counsel for appellant shall advise the clerk of this court of the telephone number where counsel may be reached and of the name, address, and telephone number of opposing counsel.

(7) Counsel for appellant shall submit an appropriate written motion to the clerk and shall serve a copy personally on opposing counsel. Other documents which counsel believes to be essential for the court's consideration may be appended to the motion. Copies of pertinent documents filed in the Superior Court may be attached as exhibits to an appropriate motion or pleading filed with this court.

(8) In juvenile interlocutory appeals (D.C. Code § 16-2328), the motion shall be submitted to the clerk no later than the first working day after the notice of appeal is filed. A copy of the motion shall be served personally on opposing counsel.

(9) Opposing counsel shall also comply with paragraph (7) by submitting any response or additional memoranda or documents and serving a copy personally on counsel for appellant.

(10) The clerk shall advise the appropriate division of this court of the pendency of the expedited appeal so that the case may be promptly scheduled for argument or submission. (Amended, May 18, 1989; Nov. 9, 1990.)

Rule 5. Appeals by permission pursuant to D.C. Code § 11-721 (d).

(a) *Time for filing application*. An appeal from a ruling or order not otherwise appealable may be sought by filing four copies of an application for permission to appeal with the clerk of this court within ten days after the entry of the order of the Superior Court with proof of service on all other parties to the action. The clerk shall not accept such application for filing unless the ruling or order sought to be appealed contains the statement of the trial judge referred to in D.C. Code § 11-721 (d). The trial judge may amend the order at any time to include the prescribed statement, and permission to appeal may be sought within ten days after entry of the amended order. A response may be filed within seven days after service of the application; four copies of the response shall be filed. The application and response shall be acted upon by the court without oral argument unless otherwise ordered.

(b) *Content of application*. The application shall contain a statement of the facts necessary to an understanding of the controlling question of law determined by the order of the Superior Court; a statement of the question; and a statement of the reasons why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation. The application shall include or have annexed thereto a copy of the order from which appeal is sought and of any findings of fact, conclusions of law, and opinion relating thereto.

(c) *Stay of proceedings in the Superior Court*. An application, filed in this court, for an appeal under this rule shall not stay the proceedings in the Superior Court unless the judge of that court who made the ruling or order, or this court or a judge thereof, shall so order.

(d) *Grant of permission*. If permission to appeal is granted, the order granting permission shall be treated as the notice of appeal, and the time fixed by these rules for transmitting the record and docketing the appeal shall run from the filing date of the order. A separate notice of appeal shall not be filed; the provisions of Rule 7A shall not apply.

Rule 6. Appeals by application pursuant to D.C. Code §§ 11-721 (c) and 17-301.

(a) *Time for filing application*. Five legible copies of the application for the allowance of an appeal shall be filed with the clerk of this court within three days from the date of the judgment or order of the Superior Court. See Rules 4 (a)(3) and 26. Filing may be accomplished by mail addressed to the clerk; but filing shall not be deemed timely unless the application is, in fact, received by the clerk within the prescribed time. The application may be filed by an individual or by counsel. If the applicant is a corporation or other entity, the application shall be filed by counsel. The application shall show service upon all parties.

(b) *Content of application; response*. The application shall contain a sufficient recital of the proceedings and evidence to present the ruling or rulings sought to be reviewed. With it there may be filed a brief statement of the points and authorities relied upon. Within three days after service of the application, an adverse party may file response.

(c) *Statement of proceedings and evidence*. Whenever in the opinion of this court if appears that a further statement of proceedings and evidence is necessary to act upon an application, either because of a conflict in the facts as stated in the application and response, or for any other reason, this court may call for a statement of proceedings and evidence from the trial judge, and may also require the original record and exhibits to be transmitted to this court.

(d) *Grant of application*. When any one of the three judges to whom the application is submitted is of the opinion that the appeal should be allowed, the application for the allowance of an appeal shall be granted; and the clerk shall transmit to the Clerk of the Superior Court a notice of the granting of the appeal, together with a copy of the application and response thereto. Within ten days thereafter, the trial judge shall certify to this court:

(1) That the facts, issues, and rulings are sufficiently and correctly set forth in the application and response; or

(2) That the facts, issues, and rulings are sufficiently and correctly set forth in the application and response, as modified, supplemented, or corrected by an accompanying statement of proceedings and evidence signed by the trial judge; or

(3) That the facts, issues, and rulings are sufficiently and correctly set forth in an accompanying statement of proceedings and evidence signed by the trial judge.

The original papers in the Superior Court, the application, the response, the certificate of the

trial judge, and the statement of proceedings and evidence, if any, shall constitute the record on appeal. If the trial judge orders reporter's transcript prepared, the certificate of the trial judge shall not be required. Where a statement of proceedings and evidence has been filed in this court as provided by section (c) prior to the granting of an appeal, the clerk shall notify the Superior Court that the appeal has been allowed and shall transmit all the papers in the case. The Clerk of the Superior Court shall annex thereto the original papers, or copies thereof, and certify and transmit the record promptly. The provisions of Rule 7A shall not apply.

(e) *Denial of application*. Denial of the application shall constitute affirmance of the judgment of the Superior Court.

(f) *Petition for reconsideration*. A petition for reconsideration by the three judges to whom the application was submitted may be filed within seven days from the date of the order denying the application. Petitions for en banc consideration shall not be filed. (Amended, Sept. 6, 1990).

Rule 7. Bond for costs on appeal in civil cases.

No security for costs shall be required, except when ordered by this court, upon motion, and for satisfactory cause shown. Where a supersedeas bond is required, it shall be filed with the Clerk of the Superior Court in conformity with the rules of that court. This court, upon motion for cause shown, may alter the amount of the bond fixed by the judge of the Superior Court, or may fix a supersedeas bond in the event the trial court refuses to fix said bond.

Rule 7A. Docketing statement and settlement conference proceedings.

(a) *Service and filing of docketing statement; payment of docketing fee*.

(1) In all cases, each appellant, within ten days after filing a notice of appeal or petition, shall serve a docketing statement in the form specified by this court on all other parties, and shall file four copies thereof of the docketing statement with the clerk. In cases in which counsel on appeal are appointed pursuant to the Criminal Justice Act, the docketing statement shall be filed by appointed appellate counsel within ten days after the date of appointment. If the prescribed docketing fee has not been previously paid and the party is not authorized to proceed in forma pauperis, the docketing fee shall be paid before the docketing statement may be filed.

(2) Each appellee or respondent may file and serve on all other parties a responsive docketing statement within ten days after expiration of the time for filing a notice of cross-appeal. Four copies of the responsive statement shall be filed with the clerk.

(3) If a cross-appeal is filed, a cross-appellant shall serve and file a docketing statement within ten days after expiration of the time for filing a notice of cross-appeal. The cross-appellee may file a responsive docketing statement within seven days thereafter.

(4) In consolidated appeals, individual appellants or appellees may file a statement or responsive statement. If separate statements are filed by individual appellants, the responsive statement may be filed within seven days after service of the latest statement to which it is responding. The filing of joint or separate statements or responsive statements shall not obligate the parties to file briefs in the same manner. In the event the issues are not limited by a conference order the parties shall not be limited in their briefs to the issues set forth in their statements.

(b) *Notice of status conference*. In appropriate cases, status conferences shall be scheduled by the clerk. The purpose of the status conferences is to facilitate the briefing process and to identify and narrow the issues on appeal. The clerk shall notify counsel if a status conference is to be held. The notice shall specify the date, time, and place of the conference, and whether the parties as well as counsel are required to attend the conference. Those in attendance shall be prepared to discuss the status of transcript preparation, possible consolidation of briefing in multi-party proceedings, limitation of the issues on review, and other matters that may affect either the calendaring of the case or the efficient presentation of the issues on appeal.

(c) *Notice of settlement conference.* The court shall determine whether one or more settlement conferences are appropriate in each non-criminal appeal. The clerk shall notify each party if a settlement conference is to be held. The notice shall specify the date, time, and place of the conference, the name of the judge or other officer who will conduct the conference, and whether the parties are required to attend the conference. Those in attendance shall be prepared to discuss the possibility of settlement, limitation of the issues to be presented for review, and other matters which may promote the prompt and fair disposition of the appeal.

(d) *Attendance at status and settlement conferences.* The attorney for each party shall attend any status or settlement conference on the date, time, and place specified in the clerk's notice. Presence of parties shall not be required at the status or settlement conferences except when a party is not represented by counsel, or when a party's attendance is expressly directed by the settlement conference officer.

(e) *Settlement conference order.* If the parties agree to settle the case, to limit the issues, or to other matters that may promote the prompt and fair disposition of the appeal (including stipulations for final resolution of disputed issues of fact or law by the settlement officer), the settlement conference officer may enter an order giving effect to such agreement. If the settlement conference order fully disposes of the case, it shall be entered by a single judge and the clerk shall immediately issue a mandate to the Superior Court or agency with directions to enter an appropriate judgment or other order. In all other cases, the settlement conference order shall be finding on the parties during the appeal, unless the court otherwise directs, on its own initiative or on motion of a party for good cause shown, on terms the court, in its discretion, deems appropriate. The settlement conference officer may also recommend to the court that a case be scheduled for expedited briefing or calendaring, as appropriate.

(f) *Sanctions.* If a party or counsel for a party fails to comply with either the provision of

sections (a) through (e) of this rule or a settlement conference order to which it has agreed, the court may impose sanctions, including dismissal of the appeal. The court, on its own initiative or on a motion of a party, may order a party or counsel who uses these rules for the purpose of delay or who fails to comply with these rules to pay costs or compensatory damages to any other party who has been harmed by delay or failure to comply. The court may condition the party's right to participate further in the review upon compliance with terms of an order or ruling, including proof of any payments specified in such order or ruling. If an award is not paid within the time specified, the court will transmit the award to the Superior Court and direct the entry of a judgment in accordance with the award.

(g) *Disqualification of settlement conference judge.* The settlement conference officer, if a judge, shall not be a member of any division which considers the case on the merits, and shall not participate in the disposition of the case by the court sitting en banc unless:

(1) The settlement conference has been conducted by a judge of the court in regular active service; and

(2) The hearing or rehearing en banc has been ordered by a majority of the other judges in regular active service; and

(3) Subsequent to the entry of the order, all parties in the cause enter into a stipulation filed with the clerk stating that no party objects to the participation by the settlement conference judge in the disposition of the case.

(h) *Confidentiality.* Any statement, representation, or offer of settlement made in a settlement conference and not embodied in a settlement conference order shall be privileged and confidential. (Amended, Oct. 4, 1988; Nov. 9, 1990.)

Rule 8. Stay or injunction pending appeal.

(a) *Stay must ordinarily be sought in the first instance in the Superior Court; motion for stay in this court.* Application for a stay of the judgment, decision, or order pending appeal or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal shall ordinarily be made in the first instance in the Superior Court. A motion for such relief may be filed with the clerk, but it shall state that application to the Superior Court for the relief sought is not practicable, or that the Superior Court has denied such an application or the relief which the applicant requested. The motion shall include the reasons stated in the Superior Court ruling denying relief. The moving party shall state in the motion the reasons for the relief requested and the facts relied upon. If the facts are subject to dispute, the motion shall be supported by affidavits or other sown statements, or copies thereof. Reasonable notice of the motion shall be given to all parties. Personal service on all parties shall be required if a ruling is requested before expiration of the normal time for responses to be filed; alternatively, the applicant shall indicate why such service is not feasible. The motion will normally be considered by a division of the court; in exceptional

cases, when this procedure would be impracticable because of the requirements of time, the application may be submitted by the clerk to a single jude of the court for consideration and interim ruling. If the record has not been filed with the clerk, a copy of the judgment, decision, or order sought to be stayed and relevant parts of the record shall be attached to the motion. The applicant shall also notify the clerk or chief deputy clerk of the court of the filing of the motion, and shall furnish the name and telephone number of opposing counsel. A request for oral argument may be included in the motion or response.

(b) *Stay may be conditioned upon giving of bond; proceedings against sureties.* The court may take appropriate action to preserve the status or rights of parties pending conclusion of the appeal, including the imposition of such conditions as it may, in its discretion, determine are necessary to prevent irreparable injury. Relief under this rule may be conditioned upon the filing of a bond or other appropriate security. In appeals from the Superior Court, if security is given in the form of a bond, stipulation, or other undertaking with one or more sureties, each surety submits to the jurisdiction of the Superior Court and irrevocably appoints the Clerk of the Superior Court as agent upon whom any papers affecting the surety's liability on the bond, stipulation, or undertaking may be served. Liability may be enforced by motion brought in the Superior Court without the necessity of an independent action. The motion and such notice of the motion as the Superior Court prescribes may be served on the Clerk of the Superior Court, who shall forthwith mail a copy to each surety whose address is known. Interest accrued on any security placed in an escrow account shall be paid to the party prevailing on appeal or, if no party prevails in entirety, shall be apportioned as the trial judge may direct.

Rule 9. Release in criminal cases.

(a) *Appeals from orders respecting release or detention entered before a judgment of conviction.*

(1) Appeal to be determined promptly. An appeal authorized by law from an order respecting release or detention before conviction shall be determined promptly. See Rule 4 (c). The appeal shall be heard without the necessity of a record or briefs after reasonable notice to the appellee upon such material as the parties shall present.

(2) Duty of Superior Court judge when appellant is detained. If the appellant is ordered detained or if the appellant is unable to make bail or meet the conditions of release so as to bring about release,and if the Superior Court judge refuses to modify the conditions of release on timely request so as to bring about the appellant's release, written findings shall be entered as required by law, or the reasons for the action taken shall be stated in the record in that court. A transcript of the stated reasons may be filed with this court in lieu of written findings.

(3) Duty of Superior Court judge when defendant is released. If a Superior Court judge orders release of a defendant and the prosecution indicates an intention to appeal that decision, the judge shall state reasons for the action taken.

(b) *Release after conviction and pending appeal.*

(1) Release sought by a defendant. Except where a petition for writ of certiorari or an appeal to the Supreme Court of the United States has been filed, whenever a convicted person is held in custody pursuant to D.C. Code § 23-1325 (b) or (c), the trial judge may allow bail or set other conditions of release subject to D.C. Code § 23-1327, but only if release is otherwise allowable by law. If (1) the trial judge refuses to set bail or (2) the appellant is unable to make bail or meet the conditions of release imposed, and the trial judge refuses to reduce bail or modify the conditions of release on timely request so as to bring about the appellant's release, the judge shall, in either event, state the reasons for the action taken. Thereafter, the appellant, by motion in the existing appeal, may request this court to review the action of the trial judge. If bail or other conditions of release are set by this court, a copy of the bond or recognizance order shall be sent to the Superior Court with the mandate of this court. The bail shall be posted with the Clerk of the Superior Court.

(2) Review of release order.

(i) After verdict and before imposition of sentence. If, after verdict, but before sentence is imposed, a defendant is ordered released, review shall be by appeal. The procedure on appeal shall be governed by Rule 4 (c).

(ii) After imposition of sentence. An order of a trial judge concerning release on bail after conviction and pending appeal shall be reviewed upon motion filed in the appeal. The parties ad the clerk shall expedite the filing of all relevant material and the motion shall be decided promptly.

(c) *Documents and affidavits required.*

(1) Order and statement to accompany request. Any request for relief, either by appeal or motion, must be accompanied by a copy of the order, if any, under review and the statement of reasons (including related findings of fact and conclusions of law) entered by the trial court.

(2) Affidavit to accompany request. Any request for relief must be accompanied by an affidavit executed by the party or attorney requesting the relief, addressing every point enumerated in Form 4. If information necessary to complete the affidavit is not available to the moving party, a statement to that effect shall be included in the affidavit.

(d) *Applicability to other proceedings.* This rule shall apply to all other proceedings in which detention or release is allowed by law except to the extent that it is inconsistent with applicable law relating to such release or detention.

(e) *Custody in habeas corpus proceedings.*

(1) Transfer of custody pending review. Pending review of a decision in a habeas corpus

proceeding, the person having custody of the petitioner shall not transfer custody to another unless such transfer is directed in accordance with the provisions of this rule. Upon application of a custodian showing a need thereof, the judge rendering the decision or this court, in the event of a denial by said judge, may issue an order authorizing transfer and providing for the substitution of the successor custodian as a party.

(2) Detention or release of prisoner pending review of decision in habeas corpus proceeding failing to release. Pending review of a decision failing or refusing to release a prisoner in such a proceeding, the prisoner may be detained in the custody from which release is sought, or in other appropriate custody, or may be enlarged upon his recognizance, with or without surety, as may appear fitting to the court or judge rendering the decision, or to this court.

(3) Release of prisoner pending review of decision in habeas corpus proceeding ordering release. Pending review of a decision ordering the release of a prisoner in such proceeding, the prisoner shall be enlarged upon his recognizance, with or without surety, unless the court or judge rendering the decision, or this court shall otherwise order.

(4) Modification of initial order respecting custody. An initial order respecting the custody or enlargement of the prisoner ad any recognizance or surety taken, shall govern review in this court unless for special reasons shown to this court, the order shall be modified, or an independent order respecting custody, enlargement or surety shall be made.

Rule 10. The record on appeal.

(a) *Designation of record.*

(1) Time for filing; contents. The appellant shall serve upon the appellee and file with the Clerk of the Superior Court 6 copies of a designation of the portions of the trial court record to be included in the record on appeal within 10 days from the date of the filing of the notice of appeal. A copy of the designation shall be filed simultaneously with the clerk of this court. The designation shall include (i) all findings of fact and conclusions of law of the court; (ii) any written opinion of the court; (iii) the judgment or order from which the appeal is taken; (iv) the notice of appeal with the date of its filing; and (v) any other relevant material. Any other party to the appeal may serve and file 6 copies of a counter-designation, specifying additional portions of the record to be included in the record on appeal, within 5 days of the filing of the designation.

(2) Written stipulation. Instead of designations, the parties may, by written stipulation filed with the clerk of this court and the Clerk of the Superior Court, specify the portion of the record to be included in the record on appeal, within 10 days after filing the notice of appeal.

(3) Appeals in which no designation is filed. In appeals in forma pauperis, in all criminal cases, and in all juvenile delinquency cases, a designation of record may be filed but is not required. Unless a partial record of the proceedings in the trial court has been designated by the parties or ordered by this court, the full record shall be prepared by the Clerk of the Superior Court and

transmitted to the clerk of this court.

(b) *Composition of the record on appeal.*

(1) Duplicate copies of original papers and exhibits. The original papers and exhibits filed in the Superior Court shall be retained by the clerk of that court. Four legible copies of the pertinent papers and exhibits, and one copy of the reporter's transcript, if any, shall be transmitted with a copy of the notice of appeal and pertinent docket entries as the record on appeal. In an appeal from the Family Division of the Superior Court relating to (i) juvenile, (ii) adoption, (iii) parentage, or (iv) neglect proceedings, the Clerk of the Superior Court, in preparing the record on appeal, shall indicate the initials of the parties instead of their true names.

(2) Original papers and exhibits. Whenever this court or any party believes that questions presented may be presented more appropriately by the use of original papers and exhibits instead of copies, or the trial court believes their transmission is necessary, this court or the trial court may direct that such originals be included in the record on appeal. Any party may file a motion in this court requesting that the originals be transmitted if the trial court has first refused such relief. The Clerk of the Superior Court is to transmit the original papers to the clerk when so ordered.

(c) *Reporter's transcript of proceedings.*

(1) Duty of the appellant to order. The appellant, unless proceeding on appeal in formal pauperis, shall order, within ten days after filing the notice of appeal, a transcript from the reporter of those parts of the proceedings not already on file deemed necessary for inclusion in the record. The appellant shall file a statement with the Clerk of the Superior Court and a copy with the clerk of this court, and shall serve a copy on opposing counsel, indicating (i) the name of the court reporter; (ii) that the transcript has been ordered; (iii) the completion date estimated by the reporter; and (iv) that satisfactory arrangements have been made with the court reporter for payment. (See Rule 23 for in forma pauperis and Criminal Justice Act cases.) If more than one court reporter will prepare transcript, the appellant shall file a separate statement for each reporter. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the record shall include the reporter's transcript of all evidence relevant to such finding or conclusion. In any appeal in which the government (United States or District of Columbia) or the Public Defender Service is a party or counsel and orders reporter's transcript prepared, counsel shall serve a copy of the order for transcript upon opposing counsel and upon the clerk of this court and shall advise the reporter that the transcript is for use on an appeal to this court. The Clerk of the Superior Court shall promptly transmit a copy of this statement filed regarding transcript to the clerk of this court.

(2) When appellant does not order any transcript. If the appellant does not order any transcript prepared for the record on appeal with 10 days after filing the notice of appeal, the appellant shall file a statement with the Clerk of the Superior Court, copies of which shall be served on opposing counsel and filed with the clerk of this court, notifying the court of appellant's intention not to request transcript preparation.

(3) Notice to appellee if partial transcript is ordered. Unless the entire reporter's transcript is to be included in the record on appeal, the appellant, within ten days after filing the notice of appeal, shall file four copies with the Clerk of the Superior Court and a copy with the clerk of this court of a statement of the portions of the reporter's transcript which the appellant intends to include in the record and of the issues to be presented on appeal. A copy of the statement shall also be served on the appellee. But see Rule 7A (f) regarding the suspension of this requirement in civil cases.

(4) Designation by appellee of additional transcript. If the appellee deems a transcript of other portions of the proceedings to be necessary, the appellee shall file and serve on the appellant within five days after the service of the statement required by paragraph (3) a designation of additional portions to be included.

(5) Duty of appellee if appellant refuses to order additional transcript. If the appellant shall refuse to order a transcript pursuant to paragraph (4), the appellant shall so notify the appellee within five days after service of the appellee's designation and shall five a copy of the notice with the clerk of this court and with the Clerk of the Superior Court. The appellee within five days thereafter shall either order the designated portions, in which event a statement shall be filed with respect to the ordering of the transcript similar to the aforesaid statement required of the appellant, or shall apply to the Superior Court for an order requiring the appellant to order the transcript.

(6) Duty of court reporter or transcriber.

(i) Notification by reporter to clerk. In any appeal where reporter's transcript is ordered prepared, the court reporter, within ten days from the date of the order for transcript, shall notify the clerk of this court, in writing, of the date of the order, the estimated number of pages, and the date by which the reporter reasonably expects to complete the transcript. See D.C., Courts Court Reporter Rule 14 (b). If the court reporter does not expect to complete the transcript within the estimated time, a request for an extension of time for completing the transcript shall be filed in writing by the reporter seven days before the estimated completion date with the clerk of this court, indicating the date the transcript was ordered, the originally estimated completion date, the number of pages actually completed, the proposed completion date, and the reasons why the transcript cannot be completed on the date estimated.

(ii) Numbering of pages; court copy of transcript. The court reporter shall number the pages of the transcript at the bottom of the page. If there is more than one reporter preparing transcript, the pages shall be renumbered as directed by the Director of the Court Reporter Division in order to reflect correctly the chronological order of the proceedings. Each reporter shall file a certified copy of the transcript prepared with the Director of the Court Reporter Division promptly upon completion of the order.

(iii) Transcripts in felony cases. In all motions and trials in felony cases, there shall be employed a reporting method whereby the transcript of proceedings can be typed by another person from an audible system. Reporters who do not use such a system in those proceedings shall reduce their notes to such an audible record immediately after an appeal is noted. The Clerk of the Superior

Court shall promptly inform such reporter of the appeal.

(d) *Statement of proceedings and evidence.*

(1) Preparation. In extraordinary circumstances, with special leave of this court, the appellant may prepare a statement of the proceedings and evidence from the best available means, including the recollection of counsel, in lieu of the reporter's transcript. The statement shall include such portions of the proceedings and evidence as are necessary to present fully and clearly the rulings of the trial judge in which error is claimed. The testimony of witnesses shall be stated in narrative form, except that if either party so desires, and the trial judge so directs or approves, any part of the testimony shall be stated in question and answer form. If error is claimed in the trial judge's charge to the jury, the entire charge or its substance shall be included in the statement. The statement shall be filed with the Clerk of the Superior Court within ten days after this court has granted leave for its filing, and copies shall be served upon all other parties, who may file objections or propose amendments within ten days after service. A copy of each objection or proposed amendment shall be served upon every other party.

(2) Approval and filing. The statement and each objection or proposed amendment shall be submitted by the Clerk of the Superior Court to the trial judge. Within ten days thereafter, the trial judge shall either settle and approve the statement or notify the parties that it is disapproved, stating the reasons for its disapproval. A statement approved by a trial judge shall be filed promptly and shall be included by the Clerk of the Superior Court in the record on appeal. A trial judge who disapproves a statement of proceedings and evidence may authorize the appellant to submit a revised statement. The appellant, if so authorized, shall submit a revised statement for the judge's approval within ten days, or in lieu thereof shall order a transcript from the court reporter. If the trial judge does not authorize the appellant to submit a revised statement, or if the appellant submits a revised statement and it is disapproved by the trial judge, the appellant shall forthwith order a transcript from the court reporter.

(3) Inapplicability to certain appeals. The provisions of the foregoing paragraphs (1) and (2) shall not apply to appeals by application under Rule 6.

(e) *Correction or modification of the record.* Any difference as to the accuracy of the record shall be submitted to and settled by the trial judge. If a material matter is misstated or omitted from the record, the parties by stipulation filed in the trial court or the trial judge upon motion by or notice to the parties, either before or after the record is transmitted to this court, or the court may direct that the omission be supplied or misstatement corrected. If necessary, a supplemental record shall be certified and transmitted by the Clerk of the Superior Court. All other questions as to the form and content of the record shall be presented to this court. No change of substance shall be made by the trial judge in the reporter's transcript for use on appeal either before or after the transcript has been filed except after notice has been given to all parties of the proposed changes and an opportunity has been provided for counsel to be heard. Stipulated changes in the reporter's transcript shall not be made unless approved by the trial judge.

(f) *Extension of time.* Motions to extend the time limits provided in this rule shall be filed in this court and granted only for good cause. (Amended, Nov. 11, 1990.)

Rule 11. Transmission of the record.

(a) *Time for transmission; duty of appellant.* The record on appeal in all cases shall be transmitted to this court no later than sixty days after the filing of the notice of appeal unless otherwise ordered by the court. Within 5 days after notice from the Clerk of the Superior Court that the record is completed or is to be transmitted in its incomplete form, the appellant shall pay the appropriate fee, if any, to the Superior Court and shall arrange for the transmittal of the record. If more than one appeal is taken from the same ruling, each appellant shall comply with Rule 10 and this rule, and a single record shall be transmitted to this court no later than 60 days after the filing of the last notice of appeal unless otherwise ordered by the court. The Clerk of the Superior Court shall submit to the clerk of this court by the tenth of each month a list of all cases in which the record on appeal, exclusion of transcript, has not been transmitted to this court within 60 days, with reasons for such failure and estimated dates by which such records will be filed.

(b) *Duty of clerk to transmit the record; duties of Director of Court Reporter Division.* The Clerk of the Superior Court shall number the documents comprising the record and shall transmit with the record a list of the documents correspondingly numbered and identified. Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless requested by a party or by the clerk of this court. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual bulk or weight. Ordinarily such items shall not be transmitted until two weeks before the scheduled argument in this court. The reporter's transcript, if completed by the time the record is transmitted, shall be placed in a separate volume of the record on appeal in proper chronological sequence with the pages numbered consecutively at the bottom. If all of the reporter's transcript has not been completed within the sixty-day time period, the Director of the Court Reporter Division shall retain the partial transcript until the full transcript has been completed. When completed, the transcript shall be placed in chronological sequence, with the pages properly renumbered, and shall be forwarded to the clerk of this court as a supplemental record on appeal. In appeals in forma pauperis where the court's copy of the reporter's transcript is filed after the transmittal of the original record on appeal, the Clerk of the Superior Court shall transmit the transcript as a supplemental record on appeal promptly upon the filing thereof by the Director of the Court Reporter Division. In all other appeals, within five days after the transcript has been filed with the Clerk of the Superior Court, the appellant shall arrange with that clerk to have a supplemental record containing the transcript transmitted and filed with the clerk of this court if the original record has previously been transmitted. The Director of the Court Reporter Division shall submit to the clerk by the tenth day of each month a list of all uncompleted transcripts ordered for this court which have not been prepared within the sixty-day period prescribed for transmission of the record, setting forth the name of the court reporter, the date the transcript was ordered, and the estimated number of pages.

(c) *Extension of time for transmission of the record; reduction of time.* This court, on motion

for cause shown, may extend the time for transmitting the record or may permit the record to be transmitted and filed after the expiration of the time allowed or fixed. This court may shorten the time and require the record to be transmitted and the appeal to be docketed at any time within the time otherwise fixed or allowed therefor by thee rules. The Superior Court may not extend the time for transmission of the record on appeal.

(d) *Record for preliminary hearing in the Court of Appeals.* If, before the record is transmitted, a party desires to file in this court a motion for dismissal, summary reversal, summary affirmance, release pending appeal, stay or injunction pending appeal, additional security on a supersedeas bond, or for any other relief, the Clerk of the Superior Court, at the request of any party and upon payment of any appropriate fee, shall transmit to this court a preliminary record containing the notice of appeal, the order appealed from, and those parts of the record designated by any party. (Amended, Nov. 9, 1990.)

Rule 12. Docketing the appeal; filing of the record.

(a) *Docketing the appeal.* Within the time allowed or fixed for transmission of the record, the appellant shall pay to the clerk the prescribed docket fee. The clerk shall thereupon file the record on appeal. The clerk shall docket all appeals listing the appellant first. If an appellant is authorized to prosecute the appeal without prepayment of fees, the clerk shall enter the appeal upon the docket without fee. The clerk may refuse to file any record received after sixty days from the date of the filing of the notice of appeal unless the time has been extended by this court. If the appellant desires to have the record docketed out of time, a motion for leave to docket the record on appeal shall be submitted with any prescribed fee. The motion shall show good cause why this court should permit the record to be filed.

(b) *Notice by clerk of docketing of the record.* The clerk shall give notice to each party of the date the record was filed. If the record is incomplete, awaiting the reporter's transcript, the clerk shall defer notice until the filing of a supplemental record containing all transcript ordered.

(c) *Sealing of record.* An appeal in which the record has been ordered sealed by this court or an appeal from the Family Division of the Superior Court relating to (1) juvenile, (2) adoption, (3) parentage, or (4) neglect proceedings shall be reflected on the public docket by the initials of the parties and the case number of the Superior Court. In these cases the clerk shall seal the records and all documents subsequently received from the Superior Court or counsel for the parties. In any other appeal noted from a case in which the record has been sealed by the Superior Court, the record alone shall be filed under seal; any filings i this court in such appeals shall be placed under seal only upon order of this court. The clerk shall not permit review or inspection of any sealed material by any person other than counsel of record for the parties except on order or direction of a judge of this court. (Amended, Sept. 6, 1990.)

Rule 13. Dismissal for failure of appellant to comply with the rules of this court.

If the appellant shall fail to cause timely transmission of the record or to pay the docket fee if required, or to take necessary steps within the time limitations fixed by these rules, any appellee may file a motion in this court to dismiss the appeal. The appellant may respond within fourteen days of service. The clerk shall docket the appeal for the purpose of permitting the court to entertain the motion without requiring payment by appellee of the docket fee, but the appellant, unless otherwise exempt from paying, shall not be permitted to respond without payment of the fee.

Rule 14. Dismissal by court.

This court, with or without notice, may dismiss an appeal for failure to comply with these rules or for any other lawful reason.

TITLE III. REVIEW OF ORDERS OF ADMINISTRATIVE AGENCIES

Rule 15. Review of agency orders.

(a) *Petition for review of order; joint petition.* Review of orders and decisions of an agency shall be obtained by filing with the clerk of this court a petition for review within thirty days after notice is given, in conformance with the rules or regulations of the agency, of the order or decision sought to be reviewed (unless an applicable statute provides a different time for filing said petition) and by tendering the prescribed docketing fee to the clerk. In the event the time prescribed by statute is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation unless the statute expressly provides otherwise. If the order or decision is made out of the presence of the parties and notice thereof is by mail, the petitioner shall have five additional days from the date of mailing. If two or more persons are entitled to petition the court for review of the same order and their interests are such as to make joinder practicable, they may file a joint petition for review and may thereafter proceed as a single petitioner. Filing may be accomplished by mail addressed to the clerk, but filing shall not be deemed timely unless the petition is received within the prescribed time period, accompanied by the appropriate fee. If the petitioner is a corporation or other entity, the petition shall be signed by counsel. If a timely petition for review is filed by a party, any other party to the proceeding before the agency may file a cross-petition for review within fourteen days after the petition was filed, or within thirty days of the date of the challenged order or decision, whichever period last expires.

(b) *Termination of time for filing petition for review.* The running of the time for filing a petition for review is terminated as to all parties by the timely filing, pursuant to the rules of the agency, of a petition for rehearing or reconsideration. The time for filing a petition for review as fixed by section (a) of this rule commences from the date when notice of the order denying the

petition is given pursuant to section (a) of this rule.

(c) *Contents of petition for review; number of copies.* The petitioner shall file six copies of the petition for review. The petition shall specify the party or parties seeking review, and shall designate the respondent agency and the order or decision, or part thereof, to be reviewed. A concise statement of the nature of the proceedings as to which review is sought and the grounds on which petitioner relies and concerning which error is alleged shall be set forth in the petition. The clerk shall docket the case in the correct name or title of the respondent regardless of the title contained in the caption of the petition for review.

(d) *Fees.* Petitioner shall pay to the clerk the prescribed docket fee fixed by the court at the time of filing the petition for review.

(e) *Service of petition.* The clerk shall on the same day the petition is filed, or as promptly thereafter as the business of the court permits, transmit one copy thereof to the respondent agency and to the Corporation Counsel for the District of Columbia or other counsel representing the agency. At or before the time of filing a petition for review, the petitioner shall serve a copy thereof on all parties who formally participated in the proceedings before the agency other than the respondents to be served by the clerk, and shall attach to the petition for review a list of those so served.

(f) *Intervention.* A party to the proceeding before the agency who desires to intervene in this court shall serve upon all parties to the proceeding, and file with the clerk, a copy of a notice of intention to intervene, whereupon the party shall be deemed an intervenor without the necessity of filing a motion. Any other party who desires to intervene shall file a motion containing a concise statement of the interest of the moving party in the appeal and the grounds upon which intervention is sought. the notice of intervention or motion for leave to intervene shall indicate on which side the party is intervening. It shall be filed within thirty days of the date on which the petition for review is filed, unless the time is extended by order of the court for good cause.

Rule 16. Record on review.

(a) *Composition of the record.* The original papers and exhibits filed with the agency shall constitute the record on review. In the agency's discretion, legible certified copies of the records and papers may be substituted for the originals.

(b) *Omissions from or misstatements in the record.* If any matter material to either party is omitted from the record by error or accident, or is misstated therein, the parties, after the record is transmitted to this court, by motion, may request the court to direct that the omission be supplied or misstatement corrected. If necessary, the court may direct that a supplemental record be certified and transmitted.

Rule 17. Filing of the record.

(a) *Time.* Within fifteen days from the date of service of the petition, the agency involved shall certify and file with the clerk the papers comprising the record of proceedings, with four legible certified copies of the records and papers. The clerk shall notify the petitioner that the record has been filed. the court may, on its own initiative, at the hearing of any review proceeding or during its consideration, require the production of the original of any and all papers, records, and documents pertaining to the case which were before the agency. Upon good cause shown, the court may shorten or extend the time above prescribed.

(b) *Reporter's transcript.* If a stenographic transcript of testimony before the agency is available, one copy of the transcript, certified as correct by the secretary or other executive officer of the agency, shall be filed with the record.

(c) *Statement of proceedings and evidence.* If no stenographic transcript is available, the record shall include a narrative statement of proceedings and evidence, approved by the secretary, or other executive officer of the agency. This statement shall include only that portion of the proceedings and evidence as is necessary to present the rulings or decisions concerning which error is claimed.

Rule 18. Stay pending appeal.

Application for a stay of a decision of an agency pending appeal in this court shall ordinarily be made in the first instance to the agency. A motion for such relief may be filed with the clerk, but it shall state that application to the agency for the relief sought is not practicable, or that the agency has denied an application or the relief which the applicant requested. The motion shall include the reasons stated in the agency ruling denying relief. The moving party shall state in the motion the reasons for the relief requested and the facts relied upon. If the facts are subject to dispute, the motion shall be supported by affidavits or other sworn statements, or copies thereof. A copy of the order or decision sought to be stayed shall be appended to the application unless the record has been filed with the clerk. Reasonable notice of the motion shall be given to all parties. Personal service on the parties shall be required if a ruling is requested prior to expiration of the normal time for responses to be filed; alternatively, the applicant shall indicate why such service is not feasible. The motion will normally be considered by a division of the court; but in exceptional cases, when this procedure would be impracticable because of the requirements of time, the application may be submitted by the clerk to a single judge of the court for consideration and interim ruling.

Rule 19. Conditions pending appeal; supersedeas bond.

The court may take appropriate action to preserve the status or rights of parties pending conclusion of the appeal, including the imposition of such conditions as it may, in its discretion, determine are necessary to prevent irreparable injury. The court may require a party seeking a stay of the decision, judgment or order on appeal in this court to post a supersedeas bond on such

conditions, in such amount, and with such sureties, as the court deems necessary.

Rule 20. Applicability of other rules.

With the exception of Rule 3 through 7 and Rules 8 through 12, all provisions of these rules, insofar as they may be pertinent, shall be applicable to review of orders and decisions of any agency. (Amended, Nov. 9, 1990.)

TITLE IV. EXTRAORDINARY WRITS

Rule 21. Writs of mandamus and prohibition.

(a) *Petition for writ; service and filing.* Application for a writ of mandamus or prohibition directed to a judge or other District of Columbia officer shall be made by filing a petition with the clerk, with proof of service on the respondent judge or District of Columbia officer and on all parties to the action in the Superior Court or the proceeding before the agency. The petition shall contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the issues presented and of the relief sought; a statement of the reasons why the writ should issue; and copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition. Upon receipt of the prescribed docket fee, the clerk shall docket the petition and submit it to the court.

(b) *Denial; order directing answer.* If the court is of the opinion that the writ should not be granted, it shall deny the petition. Otherwise, it shall order that an answer to the petition be filed by the respondents within the time fixed by the order. Nothing contained in this rule shall preclude any respondent from submitting an answer to the petition prior to the entry of an order denying the petition if respondent desires to do so. The order shall be served by the clerk on the judge or other District of Columbia officer named as respondent and on all other parties to the action in the Superior Court or before the agency. All parties below other than the petitioner shall be deemed respondents for all purposes. Two or more respondents may answer jointly. Any judge or District of Columbia officer named as respondent who does not desire to appear in the proceeding shall so advise the clerk and all parties by letter, but the petition shall not thereby be deemed admitted. The clerk shall advise the parties of the dates on which briefs are to be filed, if briefs are required, and of the date of oral argument, if any. The proceeding shall be given preference over ordinary civil cases.

(c) *Number of copies.* Four copies of all papers shall be filed, but the court may direct that additional copies be furnished.

Rule 22. Other extraordinary writs.

(a) *Petition for writ; service and filing.* Application for extraordinary writs other than those provided for in Rule 21 shall be made by petition filed with the clerk with proof of service on the parties named as respondents. Proceedings on such application shall conform, as far as is practicable, to the procedure prescribed in Rule 21.

(b) *Number of copies.* Four copies of all papers shall be filed, but the court may direct that additional copies be furnished.

TITLE V. PROCEEDINGS IN FORMA PAUPERIS

Rule 23. Proceedings in forma pauperis.

(a) *In forma pauperis proceeding approved previously.* A party who has been permitted to proceed in an action in the Superior Court in forma pauperis, or as one who is financially unable to obtain an adequate defense in a criminal case, shall be permitted to proceed on appeal in forma pauperis without further action.

(b) *In forma pauperis proceeding not approved previously.*

(1) Motion and affidavit. A party to an action in the Superior Court who did not proceed therein forma pauperis or who, in a criminal case, did not proceed as one financially unable to obtain an adequate defense, and who desires to proceed in this court without prepayment of fees and costs, shall file with the clerk of this court within the time permitted for filing a notice of appeal a motion for leave so to proceed and an affidavit containing the information required by Form 5, showing an inability to pay fees and costs or to give security therefor. The affidavit shall be subscribed and sworn to before a notary public or other officer authorized to administer oaths. The movant shall also attach a notice of appeal to the motion in the detail prescribed in Form 1. The motion shall indicate to what extent reporter's transcript of the Superior Court proceedings is necessary for appellate review.

(2) If motion is granted. If the court grants the motion, the clerk shall transmit a copy of the order granting the motion, accompanied by the original notice of appeal, to the Clerk of the Superior Court, who shall cause the notice of appeal to be filed as of the date it was received by the clerk of this court.

(3) If motion is denied. Where a timely application was filed, if the court denies leave to proceed on appeal in forma pauperis, the clerk shall transmit a copy of an order denying the motion to the movant or counsel, who shall have thirty days from the filing date of the order denying the motion within which to tender the appropriate fee to the Clerk of the Superior Court. If the fee is paid within thirty days, the Clerk of the Superior Court shall cause the notice of appeal to be filed as of the date it was received by the clerk of this court.

(c) *Reporter's transcript in forma pauperis appeals.* In all cases in which the appellant is

proceeding on appeal in forma pauperis or has been permitted to proceed in the Superior Court as one who is financially unable to obtain an adequate defense in a criminal case, the notice of appeal shall be considered by the Superior Court as also encompassing a request for the preparation of the reporter's transcript at the expense of the government. In criminal and juvenile cases, the request shall be treated as an order for the reporter's transcript of the trial and transmitted directly by the Clerk of the Superior Court, with a copy of the jacket entries, to the Court Reporters Division for preparation of the transcript forthwith. The transcript prepared shall consist of the entire trial proceedings except the voir dire of the jury and the opening statements of counsel. In addition, the transcript of any pretrial evidentiary hearing on a motion to suppress evidence shall be prepared forthwith, without further authorization, upon the written request to the Court Reporters Division made by counsel for the appellant, who shall also file a copy of that request with the Clerk of this court. Requests for preparation of transcripts of all other proceedings in the Superior Court shall be made, on motion with notice, to the appropriate motions or trial judge, for determination in accordance with *Gaskins v. United States,* 264 A.2d 589 (D.C. 1970) or *McKelton v. Bruno*, 264 A.2d 493 (D.C. 1970). (Amended, Oct. 4, 1988.)

Rule 24. Proceedings in forma pauperis -- Administrative agencies.

A party to a proceeding before an agency of the District of Columbia who desires to proceed in this court in forma pauperis when review may be had in this court shall file with the clerk a motion for leave to proceed in forma pauperis, together with an affidavit containing the information required by Form 5. The motion shall be filed within thirty days after the petitioner was given notice of the order or decision sought to be reviewed unless an applicable statute provides a different time for filing the petition for review. The petition for review shall be lodged with the clerk at the time of the filing of the motion to proceed in forma pauperis.

TITLE VI. GENERAL PROVISIONS

Rule 25. Filing and service.

(a) *Filing*. Briefs, petitions, motions, and all other papers required or permitted to be filed in this court shall be filed with the clerk. Filing may be accomplished by mail addressed to the clerk, but filing shall not be deemed timely unless the papers are received by the clerk within the time fixed for filing.

(b) *Service of all papers required.* Copies of all papers filed by any party and not required by these rules to be served by the clerk shall be served, at or before the time of filing, by a party or counsel on all other parties to the appeal. Service on a party represented by counsel shall be made on counsel.

(c) *Manner of service.* Service may be personal or by mail. Personal service includes delivery of the copy to a responsible person at the office of counsel. If an opposing party is not represented

by counsel, service shall be made upon that party by personal delivery, or by mailing a copy addressed to the party at the party's place of business or residence. Requests for expedited or emergency consideration by this court shall be personally served on all parties.

(d) *Proof of service.* Papers presented for filing shall contain either an acknowledgement of service by the person served or of the opposing party if not represented by counsel or proof of service in the form of a certificate of counsel or an affidavit of any other person making the service. The certificate or affidavit shall indicate the date and manner of service and the names and addresses of the persons served. It shall not be sufficient that service was made upon the office, entity, or corporation named. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment or proof of service but shall require such proof to be filed promptly thereafter.

(e) *Non-acceptance of papers by clerk.* If any paper is for any reason not accepted by the clerk for filing, the clerk shall promptly notify the person or persons named in the certificate of service.

Rule 26. Computation and extension of time.

(a) *Computation of time.* In computing any period of time prescribed or allowed by these rules or an order of this court, or any applicable statute, or the time for application to this court for allowance of appeal, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather conditions have made the office of the clerk inaccessible, in which event the period shall run until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation unless an applicable statute expressly provides otherwise. As used in this rule "legal holiday" includes New Year's Day, Dr. Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the District of Columbia.

(b) *Enlargement of time.* The court for good cause shown, upon motion, may enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time. The court shall not enlarge the time for filing a notice of appeal or petition for review or for doing any act when the time for doing the act has been prescribed by statute.

(c) *Additional time after service by mail.* Whenever a party has the right or duty to act or proceed within a prescribed period after the service of a paper upon that party and the paper is served by mail, the party shall have five additional days within which to act. (Amended, Sept. 6, 1990.)

Rule 27. Motions.

(a) *Content of motions; response or opposition; reply.* Unless another form is prescribed elsewhere by these rules, an application for an order or other relief shall be made by filing a motion with the clerk. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion. It shall state with particularity the grounds on which it is based, and shall clearly set forth the order or relief sought. If a motion is to be supported by memoranda, affidavits, or other papers, they shall be attached and served with the motion. Any party may file a response or opposition to a motion within seven days after service of the motion, but the court may shorten or extend this time. The response or opposition shall not include a motion for other affirmative relief against the moving party. A party filing a response or opposition who desires to submit such a motion shall do so by a separate pleading. A reply to a response or opposition may be filed within three days after service of the response or opposition, but the reply shall not reargue propositions presented in the motion nor present matters which are not strictly in reply to the opposition. No further pleading may be filed except by leave of court for extraordinary cause.

(b) *Who may file.* Any party may file a motion. When a party is represented by counsel, the individual party shall not file a motion or pleading, except for a motion to discharge or vacate the appointment of counsel, which the clerk shall transmit to counsel of record for that party.

(c) *Procedural motions.* Motions to consolidate cases shall be filed promptly after the moving party becomes aware of grounds for consolidation. Other procedural motions that affect the calendaring of the case may be filed from the date the appeal is docketed until 30 days after notification from the clerk that the record on appeal, including all transcripts, has been filed in the office of the clerk. All other procedural motions may be filed at any time. Notwithstanding the provisions of section (a), motions for procedural orders may be acted upon by a single judge, at any time, without awaiting the filing of a response or opposition.

(d) *Clerk may grant procedural motions.* The clerk may grant for the court procedural motions which are ordinarily granted as of course, and if, in the opinion of the clerk, the granting of the motion would not prejudicially delay the work of the court. Orders by the clerk granting motions shall be entered on the docket. A party adversely affected by an order so entered shall be entitled to reconsideration thereof if, within ten days after the date of the order, the party serves and files a motion for reconsideration, setting forth the grounds therefor. The clerk shall submit the motion for reconsideration to the Chief Judge or Acting Chief Judge.

(e) *Form of papers; number of copies.* All papers relating to motions may be typewritten and shall be on opaque white paper, approximately 11 inches long and 8-1/2 inches wide, without back or cover. Until January 1, 1991, papers may continue to be submitted on legal size paper. The papers shall be fastened at the top left corner with papers numbered at the bottom of each page. All typing shall be double spaced except for footnotes and quotations which may be indented. The first page shall contain the name of the court, the number and caption of the case, and the purpose of the motion. Four copies shall be filed with the clerk, except that when en banc consideration is required or requested, ten copies shall be filed. The clerk may require that additional copies be furnished.

(f) *Clerk may refuse to file.* If a motion does not conform to the rules or is not legible, the clerk may refuse to file it.

(g) *Summary disposition motions.* Any party may file a motion for summary affirmance or summary reversal. An appellant who intends to file a motion for summary disposition shall inform the court in writing within 15 days after notification from the clerk that the record on appeal, including transcript, has been filed. An appellee who intends to file a motion for summary disposition shall inform the court in writing within 15 days from the date the brief of appellant is served on appellee. Any such motion for summary disposition shall be filed within 25 days after the date on which the movant informed the court of the intent to file the motion. The filing of a dispositive motion shall stay the briefing schedule unless otherwise ordered by the court. If a memorandum of law was previously filed in the Superior Court, it may be attached as an appendix to the motion. Responsive pleadings may be filed pursuant to the provisions of section (a) of this rule. A cross-motion for summary disposition may be filed in lieu of a response to a motion for summary disposition. If counsel deems it appropriate, a statement may be included in the motion or responsive pleading indicating that the motion or responsive pleading may be treated as the brief of the party if the court denies the motion or defers consideration on the merits. If the pleadings are treated as the briefs, the clerk shall promptly schedule the case for argument or submission.

(h) *Citations in motions.* The provisions of Rule 28 (h), governing citations in briefs, shall also apply to citations in motions and in all other papers filed with the court. (Amended, Sept. 6, 1990; Nov. 9, 1990.)

Rule 28. Contents of briefs.

(a) *Brief of the appellant.* The brief of the appellant shall contain a title page, on which shall appear the number and caption of the case in this court, the name(s) of counsel filing the brief, indicating, if then known, the name of counsel who will argue the appeal, (where counsel has been appointed to represent a party, a notation to that effect should appear beneath counsel's name), and the type of appeal or proceeding. The remainder of the brief shall contain, under appropriate headings ad in the order here indicated:

(1) A certificate of counsel. In all civil and agency cases a certificate shall be furnished by counsel of record for all private (non-governmental) parties, including specifically all appellants and all appellees, as well as all intervenors and amici, setting forth a complete list of all parties and amici who have appeared below. Whenever a corporation is a party or amicus, the certificate of counsel for that party or amicus shall also list all parent companies, subsidiaries and affiliates of that party or amicus. Whenever a partnership is a party or amicus, the certificate of counsel for that party or amicus shall also list all partners, including silent partners. This certificate shall appear on the first page of each brief after the title page, before the table of contents. The purpose of this certificate is to enable the judges of this court to consider possible disqualification or recusal and to determine the time and alignment of parties for oral argument. the form of the certificate shall be as follows:

"[Number and Title of Case]
Certificate required by Rule 28 (a) (1)
of the Rules of the District of
Columbia Court of Appeals:

The undersigned, counsel of record for . . . ., certifies that the following listed parties and amici (if any) appeared below: (Here list added names of all such parties and amici (in addition, counsel for a party or amicus which is a corporation shall here list all parent companies, subsidiaries and affiliates of that corporation), and indicate the position the respective parties and any amici take with regard to the order(s) or judgment(s) under review.)

These representations are made in order that judges of this court, inter alia, may evaluate possible disqualification or recusal.

.....
Attorney of record for ...."

(2) A table of contents, with page references, and a table of cases alphabetically arranged with asterisks placed before the cases chiefly relied upon, statutes, rules, regulations, and other authorities cited, with references to the pages of the brief where they are cited.

(3) A statement of the issues presented for review.

(4) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court or agency below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record (see section (e)).

(5) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on.

(6) A short conclusion stating the precise relief sought.

(b) *Brief of the appellee.* The brief of the appellee shall conform to all the requirements of section (a) of this rule, except that a statement of the issues or of the case need not be made unless the appellee chooses to do so.

(c) *Reply brief.* The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. No further briefs may be filed except by leave of court.

(d) *References in briefs to parties.* Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of parties, or descriptive terms such as "the employee," "the injured person," "the landlord," "the tenant," or "the husband."

(e) *References in briefs to the record.* References in the briefs to parts of the record shall be to the pages at which those parts appear.

(f) *Reproduction of statutes, rules, regulations, etc.* If determination of the issues presented requires the study of statutes, rules, or regulations, or relevant parts thereof, they shall be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form.

(g) *Length of briefs.* Except by special order of court the brief for appellant or appellee shall not exceed 50 pages in length; a reply brief, if any, shall not exceed 20 pages.

(h) *Citations in briefs.* Any published opinion or order of this court may be cited in any brief. Unpublished opinions or orders of this court shall not be cited in any brief, except when they are relevant under the doctrines of the law of the case, res judicata, or collateral estoppel, or in a criminal action or proceeding involving the same defendant, or in a disciplinary action or proceeding that (1) was decided prior to January 1, 1991, or (2) involves the same respondent.

(i) *Briefs in cases involving cross-appeals.* If a cross-appeal if filed, the plaintiff in the court below shall be deemed the appellant for the purposes of this rule, unless the parties otherwise agree or the court otherwise orders. The brief of the appellee shall contain the issues and argument involved in the appellee's appeal as well as the answer to the brief of the appellant.

(j) *Briefs in cases involving multiple appellants or appellees.* In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(k) *Citation of supplemental authorities.* When pertinent and significant authorities come to the attention of a party after the brief has been filed, or after oral argument or submission but before decision, a party may promptly advise the clerk, by letter (four copies), with copies to all counsel, setting forth the citations. The letter shall refer either to the page of the brief or to a point argued orally tow which the citations pertain, but shall state without argument the reasons for the supplemental citations. Any response (four copies) shall be made promptly and shall be similarly limited. If the supplemental authorities are not readily available in published form, the party submitting the letter shall also submit four copies of the supplemental authorities to the court. (Amended, eff. Apr. 5, 1991.)

Rule 29. Brief and oral argument of an amicus curiae.

(a) *Filing of brief.* A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of court granted on motion or at the request of the court, except that consent or leave shall not be required when the brief is filed by the United States or the District of Columbia or an officer or agency thereof, or by a state, territory, commonwealth, or political subdivision thereof. Four copies of the brief maybe lodged with the clerk at the time of filing of the motion for leave to file the brief. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Except as all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus curiae will support unless the court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer.

(b) *Oral argument by amicus curiae.* An amicus curiae will not be permitted to participate in the oral argument except by request of the court, or by permission of the court granted on motion giving extraordinary reasons. When the brief of amicus curiae is filed pursuant to written consents of all parties or is filed by the United States or the District of Columbia, or an officer or agency thereof, or by a state, territory, commonwealth, or political subdivision thereof, the motion for leave to argue shall accompany the brief. In all other cases, any request to participate in oral argument shall be made in the motion for leave to file the brief.

(c) *Hearing of case not to be delayed.* The hearing of a case shall not be delayed pending action on a motion for leave to file an amicus curiae brief or a motion of an amicus curiae for permission to participate in the oral argument or to await the filing of a brief of an amicus curiae.

Rule 30. List and copies of transcript.

The parties shall not be required to file an appendix, unless directed by the court. However, in any appeals in which the reporter's transcript is included in the record on appeal and the transcript contains more than 200 pages, counsel for the parties in filing their briefs shall furnish the clerk and serve upon opposing counsel a list of the pertinent pages in the reporter's transcript, with respect to each argument made in the briefs, which counsel deem necessary for the court to read in conjunction with the briefs. In these cases counsel shall furnish the clerk with three copies of the listed pages of the reporter's transcript at the time of filing of their briefs. In appeals in forma pauperis, subject to the direction of this court, the clerk shall prepare duplicate copies of the listed pages of the transcript for the use of the court.

Rule 31. Filing and service of briefs.

(a) *Time for serving and filing briefs.* The time periods specified in this rule shall apply unless otherwise ordered by the court.

(1) Appellant's brief. The appellant shall serve and file a brief within 40 days after the date on which the complete record, including transcript, is filed with the clerk. If a motion for dispositive relief is filed, appellant's brief shall be filed within 40 days after entry of the order denying dispositive relief.

(2) Appellee's brief. The appellee shall serve and file a brief within 30 days after service of the brief of the appellant or petitioner.

(3) Reply brief. The appellant may serve and file a reply brief within 10 days after service of the brief of the appellee; but except for good cause shown, a reply brief must be filed at least three days before argument.

(4) When reporter's transcript is ordered. When the reporter's transcript has been ordered prepared, counsel for appellants in appeals other than in forma pauperis appeals, within 5 days after the reporter's transcript has been filed with the Clerk of the Superior Court, shall arrange with the clerk to have a supplemental record containing the reporter's transcript transmitted to this court if the original record has been previously transmitted to this court.

(5) Consolidated appeals. In consolidated appeals, individual appellants or appellees may join to file a single brief. If separate briefs are filed by individual appellants or appellees, the responding brief or briefs shall be filed in the time provided in the appropriate paragraph (2) or (3) of this rule, this time to run from the service of the latest brief to which response is made.

(b) *Number of copies to be filed and served.* Four copies of each brief shall be filed with the clerk, unless the court by order in a particular case shall direct otherwise; but if the case is to be heard en banc, ten copies of each brief shall be filed. A copy shall be served on counsel for each party separately represented. If a case is to be reheard en banc, counsel on request of the clerk shall furnish additional copies of their briefs.

(c) *Consequence of failure to file briefs.* If an appellant fails to file a brief within the time provided by this rule, or within the time as extended, the appellee may move for dismissal of the appeal. A party who fails to file a brief will not be heard at oral argument except by permission of the court. (Amended, Nov. 9, 1990.)

Rule 32. Form of briefs.

(a) *Form of briefs.* All briefs and other papers, in lieu of printing, may be typewritten, mimeographed or prepared by permanent copy method which produces a clear black image on opaque white paper, approximately 8-1/2 inches by 11 inches, unfolded, without back or cover, fastened at the time left corner with pages numbered at the bottom of each page. Until January 1, 1991, briefs and other papers may continue to be submitted on legal size paper. A margin of 1-1/4 inches shall be left clear on the left side of each page and a margin of 1/2 inch on the right side of each page. All typing shall be double spaced, except footnotes and quotations which may be

indented.

If printed records of briefs produced by the standard typographic process are filed, they shall be in not less than 11 point type, the pages to be not less than 6-1/2 inches by 9-1/4 inches and type matter 4-1/6 inches by 7-1/6 inches. Those produced by any other process shall be bound in volumes having pages not exceeding 8-1/2 by 11 inches and type matter not exceeding 6-1/2 by 9-1/2 inches, with double spacing between each line of text.

(b) *Covers of briefs.* Covers are not required unless the brief is printed. If any party desires to file a brief with a cover, the brief of appellant shall be blue; that of appellee, red; that of intervenor or amicus curiae, green; and any reply brief, gray. The front covers of the briefs, if separately printed, shall contain:

(1) The name of the court and the number of the case;

(2) The caption of the case;

(3) The nature of the proceeding in the court (e.g., Appeal; Petition for Review) and the name of the court or agency below;

(4) The title of the document (e.g., Brief for Appellant); and

(5) The names, addresses, and telephone numbers of counsel representing the party on whose behalf the document is filed.

(c) *Clerk may refuse to file briefs.* If a brief does not conform to the rules of this court or is not legible, the clerk may refuse to file it. (Amended, Sept. 6, 1990.)

Rule 33. Form of other papers.

All petitions, motions, applications, and other papers shall be produced in the form prescribed by Rule 32 (a). Four copies shall be filed with each original application for the allowance of an appeal under Rule 6. Three copies shall be filed with each petition for writ of mandamus, writ of prohibition or other extraordinary relief. Five copies shall be filed with each petition for review. Nine copies shall be filed with each petition for a rehearing or rehearing en banc. Carbon copies may be used for filing and service provided they are clearly legible. Use of photocopies (permanent dry process) is encouraged. If a pleading does not conform to the rules of this court, or is not clearly legible, the clerk may refuse to file it.

A motion or other paper addressed to the court shall contain a caption setting forth the name of this court, the title of the case, the docket number, and a brief descriptive title indicating the purpose of the paper.

Rule 34. Calendaring of cases.

(a) *Regular calendar.* After the record on appeal is filed, the clerk shall give notice to each party of the particular month in which a given case shall be calendared and whether the case has been placed on the regular, summary I, or summary II calendar. With respect to regular calendar cases and summary calendar cases in which oral argument has been approved pursuant to the following subsection, counsel shall be notified of the specific date and time for oral argument approximately 30 days in advance. Each month the Chief Judge, with the assistance of the clerk, shall prepare and post a calendar of the cases to be argued during the following month, indicating the docket number, the short title of the case, and the names of the attorneys for each party. The notice of calendaring shall be mailed by the clerk to each attorney whose name appears on the calendar, at the attorney's address of record. If a party is without counsel, the notice of calendaring shall be mailed to the party's address. Since the notice of calendaring shall be posted in the public office of the clerk and published in The Daily Washington Law Reporter, failure of counsel or a party to receive the notice of calendaring shall not be an excuse for failure to appear when the case is called for argument.

(b) *Summary calendar.* Cases placed on either the summary I or the summary II calendar by the clerk pursuant to directions from the court shall not be argued unless a request for argument is approved by the court or argument is ordered by the court, sua sponte. Requests for oral argument must be served on all parties and filed with the clerk within 10 days after notice of calendaring has been mailed by the clerk.

(c) *Postponing or advancing case.* If counsel or an unrepresented party cannot, for good cause, appear in court on the scheduled argument date, a motion for a postponement shall be filed promptly with the clerk for consideration by the court or a judge thereof. Scheduled trials or other proceedings in any trial court, whether federal, state, or local, shall not ordinarily be deemed good cause for postponing argument; however, a case may be set first or last for hearing to accommodate a trial judge. (Amended, Nov. 9, 1990.)

Rule 35. Oral argument.

(a) *Appellant entitled to open and conclude case; cross-appeals.* The appellant shall be entitled to open and conclude the case; but when there are cross-appeals, they shall be argued together as one case, and in cross-appeals the plaintiff i the action below shall be entitled to open and conclude the argument unless the court otherwise directs.

(b) *Number of counsel.* Not more than two counsel shall be heard for each side in the argument of the case, except by leave of court, upon sufficient reason shown by motion filed with the clerk. When cases have been consolidated, they are deemed one case for purposes of argument.

(c) *Intervenor.* Counsel for an intervenor shall be permitted to argue to the extent to which

counsel on whose side the intervenor has intervened is willing to share the allotted argument time.

(d) *Amicus curiae.* See Rule 29 (b).

(e) *Special admission for argument.* An attorney who is qualified to practice before the highest court of any state, territory, or commonwealth may be specially admitted for the purpose of arguing a particular case. Such attorney, however, shall not be authorized to act as attorney of record.

(f) *Time allowed.*

(1) Regular calendar. Each side shall be allowed not more than thirty minutes for argument, unless the time is extended by the court.

(2) Summary I and summary II calendars and motions arguments. If court orders oral argument in either a summary I or summary II case, each side shall be allowed not more than 15 minutes for argument of cases on the summary I calendar, and not more than 10 minutes for argument of cases on the summary II calendar. When motions are scheduled for argument, each side shall be allowed not more than 15 minutes of argument time. The court may extend the time for oral argument in appropriate cases.

(3) En banc argument. The court, in its discretion, shall determine the time permitted for oral argument. The time allowed in any given case ordinarily shall not exceed 45 minutes per side.

(4) Apportionment of time. The time allowed may be apportioned between counsel on the same side at their discretion, provided that a fair opening of the case shall be made by the party having the opening and closing arguments. If counsel on the same side, between whom time is to be apportioned, represent different interest, the apportionment of time agreed upon shall be reported by them to the court at the opening of argument; or, if an agreement has not been made, the apportionment shall be made by the court.

(5) Motion for additional time. A motion for additional time for argument shall be filed not later than ten days after appellee's brief has been filed.

(6) Submission on briefs. Any case may be submitted on the briefs, unless the court directs argument.

(7) Non-appearance of parties. If the appellee fails to appear to present argument, the court will hear argument on behalf of the appellant, if present, and if the appellant has filed a brief. If the appellant fails to appear, the court may hear argument on behalf of the appellee, if the appellee has filed a brief. If neither party appears, the case shall be decided on the briefs unless the court otherwise directs. See also Rule 31 (c). (Amended, Nov. 9, 1990.)

Rule 36. Judgments and opinions.

(a) *Preparation and entry of judgments.* The notation of a judgment on the docket constitutes entry of the judgment. The clerk shall prepare, sign, and enter the judgment immediately after receipt of the opinion of the court unless the opinion directs settlement of the form of the judgment, in which event the clerk shall prepare, sign, and enter the judgment after final settlement by the court. If a judgment is rendered without an opinion, the clerk shall prepare, sign and enter the judgment upon instructions from the court.

(b) *Notice of orders or judgments.* Immediately upon the entry of an order or judgment, the clerk shall serve by mail upon each party to the proceedings a copy of any opinion accompanying the order or judgment. If there is no opinion, the clerk shall serve a copy of the order or judgment. Service on a party represented by counsel shall be made on counsel.

(c) *Publication of opinions.* An opinion may be either published or unpublished. Any party or other interested person may request that an unpublished opinion be published by filing a motion within thirty days after issuance of the opinion, stating why publication is merited. Publication shall be granted by a vote of two or more members of the division which issued the opinion, but a motion filed by a non-party shall not be granted except on a showing of good cause. The court sua sponte may also publish at any time a previously issued but unpublished opinion.

Rule 37. Interest on judgments.

Unless otherwise provided by law, if a judgment for money in a civil case in the Superior Court or a monetary award in an agency proceeding is affirmed, whatever interest is allowed by law shall be payable from the date of that judgment. If a judgment is modified or reversed with a direction that a judgment for money be entered in the Superior Court, or if a monetary award in an agency proceeding is affirmed, but the case is remanded for further proceedings, the prevailing party, by motion filed with the clerk within ten days after judgment or the issuance of an agency award on remand, may request the allowance of such interest as the party believes appropriate.

Rule 38. Damages for delay.

If this court shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

Rule 39. Costs.

(a) *To whom allowed.* Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant, unless otherwise agreed by the parties or ordered by the court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a

judgment is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the court.

(b) *Costs for and against the United States.* In cases involving the United States or an agency or officer thereof, if an award of costs against the United States is authorized by law, costs shall be awarded in accordance with the provisions of section (a); otherwise costs shall not be awarded for or against the United States.

(c) *Prepayment not required of United States or District of Columbia.* Prepayment of costs shall not be required of the United States or the District of Columbia or an officer or agency thereof.

(d) *Requests for costs.* A party entitled to costs may, within ten days from the date of decision, submit and serve on opposing counsel a written request to the clerk to insert a specified amount in the mandate or process sent to the Superior Court. Objections may be filed within seven days after service of the request on the party against whom costs are to be taxed. The issuance of the mandate shall not be delayed for taxation of costs; if the mandate is issued before costs are determined, the costs shall be added to the mandate by the Clerk of the Superior Court upon request by the clerk of this court.

(e) *Costs on appeal taxable in the Superior Court.* Costs incurred in the preparation and transmission of the record, the costs of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for costs of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing the notice of appeal shall be determined in the Superior Court and taxed, if assessed, in that court as costs of the appeal in favor of the party entitled to costs under this rule. If the briefs or the record on appeal are printed, the cost of printing by any method shall not be taxed as an allowable cost.

(f) *Costs on appeal in agency cases.* Costs specified in section (e) incurred in appeals from agency orders, decisions, or rulings shall be determined in this court and taxed, if assessed, in this court as costs of the appeal in favor of the party entitled to costs under this rule. If the briefs or the record on appeal are printed, the cost of printing by any method shall not be taxed as an allowable cost.

Rule 40. Petitions for rehearing, rehearing en banc, or initial hearing en banc.

(a) *Time for filing a petition for rehearing or rehearing en banc.* A petition for rehearing or rehearing en banc may be filed within fourteen days after entry of judgment unless the time is shortened or extended by order. In cases consolidated on appeal, a petition filed by one party shall not be deemed to be filed by any other party.

(b) *Content; answer.* The petition shall state with particularity the points of law or fact which, in the opinion of the petitioner, the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. The petition shall not exceed

ten pages in length. Oral argument in support of the petition ordinarily will not be permitted. No answer to a petition for rehearing or rehearing en banc shall be received unless requested by the court, but a petition will ordinarily not be granted in the absence of a request. The clerk shall transmit a petition for rehearing en banc to the judges of the court who are in regular active service, and to any retired judge who was a member of the division that heard the case. A vote will be taken to determine whether the case shall be reheard en banc only if a judge of this court in regular active service or a retired judge of this court who was a member of the division that rendered the decision sought to be reheard requests that a vote be taken.

(c) *Grant of petition for rehearing or rehearing en banc.* If a petition for rehearing or rehearing en banc is granted, the court may make a final disposition of the case without reargument, may restore it to the calendar for reargument, or may make such other orders as it deems appropriate in the particular case.

(d) *Petition for initial hearing en banc.* A party, upon filing a brief, may request a hearing en banc by filing ten copies of a petition with the clerk. The petition shall not exceed ten pages in length. The clerk shall transmit the petition to the judges of the court who are in regular active service. A vote will be taken to determine whether the case shall be heard initially en banc only if a judge in regular active service requests that a vote be taken.

(e) *When hearing or rehearing en banc will be ordered.* A majority of the judges in regular active service may order that an appeal or other proceeding be heard or reheard by the court en banc. Such a hearing or rehearing is not favored and ordinarily will not be ordered except (1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance.

Rule 41. Issuance of mandate; stay of mandate.

(a) *Date of issuance.* The mandate of the court shall issue twenty-one days after the entry of judgment, unless the time is shortened or extended by order. A certified copy of the judgment, a copy of the opinion of court, if any, and any direction as to costs shall constitute the mandate, unless the court directs that a formal mandate issue. The timely filing of a petition for rehearing or rehearing en banc will stay the mandate until disposition of the petition unless otherwise ordered by the court. In cases consolidated on appeal, a petition filed by one party shall not operate to stay the mandate as to any other party. If the petition is denied, the mandate shall issue seven days after entry of the order denying the petition, unless the time is shortened or extended by order.

(b) *Stay of mandate pending application for certiorari.* A stay of the mandate pending application to the Supreme Court for a writ of certiorari may be granted upon motion. The stay shall not exceed thirty days from the date on which the mandate would have issued pursuant to section (a) of this rule unless the period is extended for cause shown. If, before issuance of the mandate pursuant to section (a), or during the period of a stay ordered by the court, there is filed with the clerk a notice from the Clerk of the Supreme Court that a petition for writ of certiorari has been filed

in that court, the clerk shall not issue the mandate until final disposition by the Supreme Court of the petition. Upon the filing of a copy of an order of the Supreme Court denying the petition for writ of certiorari, the clerk shall issue the mandate immediately. A bond or other security may be required as a condition to the grant or continuance of a stay of the mandate.

(c) *Recall of mandate.* In any appeal from a judgment of conviction in a criminal case, no motion to recall the mandate based on the asserted failure of counsel to represent the appellant effectively on appeal shall be considered by the court unless the motion is filed within 180 days from the issuance of the mandate.

(d) *Disciplinary cases.* No mandate shall issue in any disciplinary case which has been initialed in this court by a report and recommendation from the Board on Professional Responsibility. Any order of disbarment or suspension from the practice of law shall state the date on which it is to take effect. After the order is entered, the court may extend its effective date on motion of any party, for good cause shown, unless an extension is otherwise prohibited.

(e) *Certification of questions of law.* Rule 54 governs the procedure for stay of transmittal of opinions in certification matters. (Amended, Sept. 23, 1987; October 4, 1988.)

Rule 42. Voluntary dismissal.

(a) *Dismissal in the Superior Court.* If an appeal has not been docketed in this court, it may be dismissed by the Superior Court upon the filing in that court of two copies of a stipulation for dismissal signed by all the parties, or upon motion and notice by the appellant. A copy of the stipulation, or motion and response, if any, shall be served on the clerk of this court.

(b) *Dismissal in this court.* After an appeal has been docketed in this court, and the parties sign and file with the clerk two copies of an agreement that the appeal be dismissed, specifying the terms as to payment of costs, and pay any fees due, the clerk shall enter a dismissal of the appeal; but no mandate or other process shall issue without an order of the court. An appeal may be dismissed on motion of the appellant upon such terms as may be agreed upon by the parties or fixed by the court.

Rule 43. Substitution of parties.

(a) *Death of a party.* If a party dies after a notice of appeal is filed or while an appeal is otherwise pending in this court, the personal representative of the deceased party may be substituted as a party, on motion filed with the clerk by the representative or by any other party. If the motion is made by a party, it shall be served upon the representative. If the deceased party has no representative, any party may suggest the death on the record; and the court may direct further proceedings. If a party against whom an appeal may be taken dies after entry of a judgment or order in the Superior Court, but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed, substitution shall be effected in this court in

accordance with this section. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by the party[s personal representative, or, if there is no personal representative, by the party's attorney of record, within the time prescribed by these rules.

(b) *Substitution for other reasons.* If substitution of a party in this court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in section (a) of this rule.

(c) *Public officers; death or separation from office.* A public officer is a party to an appeal in an official capacity and, during its pendency, dies, resigns, or otherwise ceases to hold office, the action shall not abate.. The officer's successor shall be substituted as a party on the docket and records of this court upon the filing by government counsel of a suggestion of change of name. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution. A public officer who is a party to an appeal in an official capacity may be described as a party by official title rather than by name, but the court may require the officer's name to be added.

Rule 44. Disability of judges.

If by reason of absence or death, sickness, or other disability, a judge before whom an action has been tried is unable to perform any duties to be performed under these rules, any other judge of the Superior Court who is able to do so may perform such duties.

Rule 45. Duties of clerk of the court.

(a) *Office hours.* The clerk's office shall be open for the transaction of business from 9:00 a.m. until 4:00 p.m. daily, except Saturdays, Sundays, and legal holidays. The court shall always be deemed open for the purpose of filing, considering, and disposing of emergency matters.

(b) *The docket.* The clerk shall make entries in appropriate dockets and records of all papers and documents filed with the court and of all proceedings of the court. Cases shall be assigned consecutive docket numbers.

(c) *Custody of records and papers.* The clerk shall not permit any papers filed with the court to be removed therefrom by any person not an official of the court, except by order or instructions of the court. After files have been microphotographed, the clerk may arrange for the destruction of the appellate case records.

(d) *Receipt and disbursement of funds.* The clerk shall receive and keep proper accounts of all moneys deposited or paid into or out of the clerk's office and make such reports concerning the accounts as may be required by law or ordered by the court.

(e) *Attendance at sessions of court.* The clerk or a deputy clerk shall attend in person the daily sessions of the court.

Rule 46. Admission to the Bar.

(a) *Committee on Admissions.* The court shall appoint a standing committee known as the Committee on Admissions (hereafter the Committee) consisting of seven members of the Bar of this court, one of whom shall serve as counsel to the Committee. Each appointment shall be for a term of three years. In case of a vacancy caused by death, resignation or otherwise, a successor appointed shall serve the unexpired term of the predecessor member. When a member holds over after the expiration of the term for which that member was appointed, the time served after the expiration of that term shall be part of a new term. No member shall be appointed to serve longer than two consecutive regular three-year terms.

Subject to the approval of the court, the Committee shall adopt such rules and regulations as it deems necessary to implement the provisions of this rule. The members of the Committee shall receive such compensation and necessary expenses as the court may approve.

(b) *Admission by examination.*

(1) Number and dates of examination. Examinations for admission to the Bar shall be held on two successive days in February and July of each year in Washington, D.C., at a place and on the dates designated by the Committee.

(2) Time to apply and fees.

(i) An application to take the bar examination shall be typewritten and submitted on a form approved by the Committee and filed with the Director of Admissions (hereafter Director) not later than January 4 for the February examination and May 23 for the July examination unless, for exceptional cause shown, the time is extended by the Committee. The contents of the application to take the examination shall be confidential except upon order of the court.

(ii) The application shall be accompanied by a certified check, cashier's check, or money order in the amount of $100, which shall be non-refundable, made payable to the Clerk, D.C. Court of Appeals. In the event there is a fee due the National Conference of Bar Examiners, the amount of the fee and the manner of payment shall be stated in the information accompanying the application form.

(iii) Late applications may be filed within 30 days from the closing dates specified in subparagraph (i) and must be accompanied by an additional, non-refundable certified check, cashier's check, or money order in the amount of $100 made payable to the Clerk, D.C. Court of Appeals.

(3) Proof of legal education in a law school approved by the American Bar Association. An applicant who has graduated from a law school that at the time of graduation was approved by the American Bar Association or who is certified by the dean of such law school as being eligible for graduation shall be permitted to take the bar examination. Under no circumstances shall such an applicant be admitted to the Bar without first having submitted to the Director a certificate that the applicant has graduated from an approved law school with a J.D. or LL.B. degree.

(4) Law study in law school not approved by the ABA. An applicant who graduated from a law school not approved by the American Bar Association shall be permitted to take the bar examination only after successfully completing at least 26 semester hours of study in the subjects tested in the bar examination in a law school that at the time of such study was approved by the American Bar Association.

(5) Multistate Professional REsponsibility Examination. An applicant for admission by examination shall not be admitted to the Bar unless that applicant has also taken an examination on the Code of Professional Responsibility National Conference of Bar Examiners and received thereon a minimum grade as determined by the Committee on Admissions. Arrangements to take said examination, including the payment of any fees therefor, shall be made directly with the Multistate Bar Examination Committee of the National Conference of Bar Examiners. The score received on the Multistate Professional Responsibility Examination (MPRE) shall not be used in connection with the scoring of the bar examination. There shall be no limit to the number of times an applicant may take the MPRE.

(6) Examination of applications. The Director shall examine each application to determine the applicant's eligibility and to verify the completeness of the application. If eligibility is not demonstrated, the applicant shall be permitted to furnish additional information. If the application is not complete, either it shall be returned to the applicant for completion or the needed information shall be requested by letter.

(7) Examination identification number. The Director shall assign an examination number to each accepted applicant. Each applicant shall be notified by the Director of an applicant's examination number and shall be furnished an admission card and a list of instructions. Further disclosure of the examination number of any applicant is prohibited.

(8) General considerations regarding the examination.

(i) Applicants shall be examined on both the essay and the Multistate Bar Examination (MBE) sections at the examination site designated by the Committee.

(A) An applicant may request the Committee to accept a prior MBE administration provided that:

1. The prior MBE scaled score is not less than 133;
2. The subjects of the prior MBE are identical to those comprising the present

MBE section; and

3. The prior administration was within 25 months of the present administration.

(B) An applicant may request the Committee to accept a prior essay administration provided that:

1. The prior essay scaled score is not less than 133; and
2. The prior administration was within 25 months of the present administration.

(ii) Any prior section administration accepted pursuant to this rule shall be valued as set forth in (b) (10) (ii) below. An applicant requesting acceptance of a prior section administration shall submit with the application to sit for the bar examination either a duly executed MBE score and release form or an essay scaled score release form.

(iii) The bar examination may cover the following subjects: administrative law, contracts, agency, Uniform Commercial Code, equity, business associations, conflicts of law, evidence, torts, wills, trusts, administration of estates, family law, real and personal property, civil and criminal procedure, constitutional law, criminal law, legal ethics and tax law. In its discretion, the Committee may change the subjects.

(iv) Each day of the examination shall require six hours writing time. ONe day shall be devoted to essay questions approved by the Committee; the other day shall be devoted to the MBE multiple-choice questions prepared by the National Conference of Bar Examiners.

(v) Examination booklets shall be furnished by the Committee. Typewriters furnished by the applicants may be used by prearrangement with the Director.

(vi) Except by permission of the Committee's representative, no applicant shall leave the examination room during the examination. Each applicant, upon leaving the examination room, shall turn in the examination booklets to the Committee's representative.

(9) Computation of essay scaled scores. The essay score on each examination shall be converted to scaled scores using the standard deviation method. The basis for this scaling shall be the distribution of MBE scaled scores of the applicants taking the essay portion of that examination.

(10) Determining pass/fail status.

(i) An applicant taking the essay and MBE sections concurrently shall be successful if the sum of the applicant's essay and MBE scaled scores is 266 or greater (i.e., an average scaled score of 133 or greater).

(ii) Where a prior administration is accepted by the Committee under (b) (8) (ii) or (iii) above, an applicant shall be successful only if:

(A) Both the prior essay scaled score and the concurrent MBE scaled score are not

less than 133; or

(B) Both the prior MBE scaled score and the concurrent essay scaled score are not less than 133, as the case may be.

For purposes of this subsection (ii) an applicant's passing status on a section will remain intact for 25 months from the date the section was administered even if the applicant fails the section on subsequent administrations.

(iii) Before notice and publication of the examination results, the Committee shall review the essay examination papers of all applicants who have attained an essay scaled score within five points below the passing grade.

(11) Time of notice and publication of results. Applicants shall be notified in writing of the results of their examination. Successful applicants shall be notified in writing of the scaled score they attained in the MBE section of the examination. An alphabetical list of the successful applicants shall be published with the request that any information tending to affect the eligibility of an applicant on moral grounds be furnished to the Committee. The first publication shall be at least 30 days before the Committee reports to the court. A copy of this list shall be posted in the officer of the clerk for three weeks.

(12) Post-examination review.

(i) The Director shall notify in writing each unsuccessful applicant of the applicant's score. the notification shall contain the applicant's score for each essay question, the scaled essay score, the MBE scaled score, and the combined score. Scores will not be rounded.

(ii) Each unsuccessful applicant may review the essay section of the examination by executing and returning the review request form to the Director within the time period specified by the Committee. The examiner's questions and comments thereto shall be made available to the unsuccessful applicant. A review of the MBE is not available. The Director shall advise the unsuccessful applicant of the date, time and place at which the essay papers may be reviewed. The review period shall not exceed three hours.

(iii) Within 10 days after review (excluding Saturdays, Sundays and legal holidays), the applicant may submit a petition for regrading setting forth the reasons in support of such petition. The petition shall be addressed to the appropriate examiner and delivered or mailed to the Director. The only identifying mark to be placed on the petition is the number assigned to the applicant for taking the examination, which number shall serve as identification. Any references to the applicant's combined score, economic status, social standing, employment, personal hardship, or other extraneous information is strictly prohibited. An applicant shall submit a separate petition to each examiner from whom the applicant seeks regrading. The petition for regrading shall be directed to the merits of the applicant's response to the examination questions.

(iv) Upon receipt of a petition for regrading, the Director shall forward to the appropriate examiner a file composed of the examiner's questions and comments with respect to such questions, the applicant's examination booklet, and the applicant's petition for regrading.

(v) Unless otherwise extended by the Chairman, the examiner shall, within 15 days (excluding Saturdays, Sundays and legal holidays), return to the Director the applicant's file together with the examiner's disposition of the petition. Applicants shall be notified that they may inspect their files within 10 days (excluding Saturdays, Sundays and legal holidays) of the date of such notification. Such inspection shall be made in the office of the Committee by appointment with the Director.

(vi) An applicant who remains unsuccessful after the petition for regrading has been disposed of and desires further review, may within five days (excluding Saturdays, Sundays and legal holidays) after the date of inspection petition in writing through the Director for further review. Such petition shall state the reasons for the exception taken to the applicant's grade.

(vii) The Director shall forward the applicant's file, including the petition for further review, to the Chairman.

(viii) Upon receipt of the applicant's file, the Chairman shall appoint two examiners, other than the examiner concerned, to review the file. Within 15 days (excluding Saturdays, Sundays and legal holidays) the appointed examiners shall render a final decision in the matter. The director shall notify the applicant of the final decision.

(13) Destruction of the essay examination papers. Destruction of the essay examination papers may commence 30 days from the date of the publication of the examination results; but destruction of the essay examination papers of an unsuccessful applicant who takes advantage of the post-examination review procedure shall be delayed for not less than 30 days after notification of the final decision on the applicant's petition for review.

(14) Previous failures. Previous failures in a bar examination shall not disqualify an applicant from taking the examination.

(15) Communication with Committee members and graders. No applicant shall communicate with Committee members or graders concerning any applicant's performance in the examination.

(c) *Admission without examination of members of the Bar of other jurisdictions.*

(1) Application. An application of an applicant seeking admission to this Bar from another state or territory shall be typewritten and submitted on a form approved by the Committee and filed with the Director. The contents of the application shall be confidential except upon order of the court.

(2) Fees. The application shall be accompanied by (1) certified check, cashier's check, or money order in the amount of $400 made payable to the Clerk, D.C. Court of Appeals, together with (2) a certified check, cashier's check, or money order made payable to the National Conference of Bar Examiners, the amount of which shall be specified on the application form.

(3) Admissions requirements. Any person may, upon proof of good moral character as it relates to the practice of law, be admitted to the Bar of this court without examination, provided that such person:

(i) Has been a member in good standing of a Bar of a court of general jurisdiction in any state or territory of the United States for a period of five years immediately preceding the filing of the application; or

(ii) (A) Has been awarded a J.D. or LL.B. degree by a law school which, at the time of the awarding of the degree, was approved by the American Bar Association;

(B) Has been admitted to the practice of law in any state or territory of the United States upon the successful completion of a written bar examination and has received a scaled score of 133 or more on the Multistate Bar Examination which the state or territory deems to have been taken as a part of such examination; and

(C) Has taken and passed, in accordance with paragraph (b) (5), the Multistate Professional Responsibility Examination (MPRE).

Application for admission under this subparagraph (ii) must be made within twenty-five months from the date of the Multistate Bar Examination that is being used as the basis for the application.

(4) Special Legal Consultants.

(A) Licensing requirements. In its discretion, the court may license to practice as a Special Legal Consultant, without examination, an applicant who:

(1) Has been admitted to practice (or has obtained the equivalent of admission) in a foreign country, and has engaged in the practice of law in that country, and has been in good standing as an attorney or counselor at law (or the equivalent of either) in that country, for a period of not less than five or the eight years immediately preceding the date of application;

(2) Possesses the good moral character and general fitness requisite for a member of the Bar of this court;

(3) Intends to practice as a Special Legal Consultant in the District of Columbia and to maintain an office for such practice in the District of Columbia which, if the applicant is a teacher of law at a law school approved by the American Bar Association, may be the office of the teacher at the law school; and

(4) Is at least twenty-six years of age.

(B) Filings required.

(1) An applicant for a license to practice as a Special Legal Consultant shall file with the Committee:

(a) A typewritten application in the form prescribed by the Committee addressed to the court in executive session, which without further order of the court shall be referred to the Committee;

(b) A certified check, cashier's check, or money order in the amount of $350.00 made payable to the Clerk, D.C. Court of Appeals;

(c) A certificate from the authority in the foreign country having final jurisdiction over professional discipline, certifying to the applicant's admission to practice (or the equivalent of such admission) and the date thereof and to the applicant's good standing as attorney or counselor at law (or the equivalent of either), together with a duly authenticated English translation of such certificate if it is not in English;

(d) A letter of recommendation from one of the members of the executive body of the authority or from one of the judges of the highest law court of original jurisdiction of the foreign country, together with a duly authenticated English translation of the letter if it is not in English; and

(e) A summary of the law and customs of the foreign country that relate to the opportunity afforded to members of the Bar of this court to establish offices for the giving of legal advice to clients in such foreign country.

(2) Upon a showing that strict compliance with the provisions of subparagraphs (A) (1), (B) (1) (c), or (B) (1) (d) of this paragraph (4) is impossible or very difficult for reasons beyond the control of the applicant, or upon a showing of exceptional professional qualifications to practice as a Special Legal Consultant, the court may, in its discretion, waive or vary the application of such provisions and permit the applicant to make such other showing as may be satisfactory to the court.

(3) The Committee may investigate the qualifications, moral character, and general fitness of any applicant for a license to practice as a Special Legal Consultant and may in any case require the applicant to submit any additional proof or information as the Committee may deem appropriate. The Committee may also require the applicant to submit a report from the National Conference of Bar Examiners, and to pay the prescribed fee therefor, with respect to the applicant's character and fitness.

(C) Opportunity to establish law office in applicant's country of admission. In considering whether to license an applicant to practice as a Special Legal Consultant, the court may in its discretion take into account whether a member of the Bar of this court would have a reasonable and practical opportunity to establish an office for the giving of legal advice to clients in the applicant's country of admission (as referred to in subparagraph (A) (1) of this paragraph (4)). Any member of the Bar who is seeking or has sought to establish an office in that country may request the court to consider the matter, or the court may do so sua sponte.

(D) Scope of practice. A person licensed to practice as a Special Legal Consultant may render legal services in the District of Columbia, notwithstanding the prohibitions of Rule 49 (b), subject, however, to the limitations that any person so licensed shall not:

(1) Appear for a person other than himself or herself as attorney in any court, before any magistrate or other judicial officer, or before any administrative agency, in the District of Columbia (other than upon admission pro hac vice in accordance with Rule 49 (b) or any applicable agency rule) or prepare pleadings or any other papers or issue subpoenas in an action or proceeding brought in any such court or agency or before any such judicial officer;

(2) Prepare any deed, mortgage, assignment, discharge, lease, or any other instrument affecting title to real estate located in the United States;

(3) Prepared:

(a) Any will or trust instrument effecting the disposition on death of any property located in the United States and owned, in whole or in part, by a resident thereof, or

(b) Any instrument relating to the administration of a decedent's estate in the United States;

(4) Prepare any instrument in respect of the marital relations, rights, or duties of a resident of the United States or the custody or care of one or more children of any such resident;

(5) Render professional legal advice on or under the law of the District of Columbia or of the United States or of any state, territory, or possession thereof (whether rendered incident to the preparation of legal instruments or otherwise) except on the basis of advice from a person acting as counsel to such Special Legal Consultant (and not in his or her official capacity as a public employee) duly qualified and entitled (other than by virtue of having been licensed as a Special Legal Consultant under this paragraph (4)) to render professional legal advice in the District of Columbia on such law who has been consulted in the particular matter at hand and has been identified to the client by name;

(6) In any way hold himself or herself out as a member of the Bar of this court; or

(7) Use any title other than one or more of the following, in each case only in

conjunction with the name of the person's country of admission:

(a) "Special Legal Consultant";
(b) Such Special Legal Consultant's firm in that country.

(E) Disciplinary provisions.

(1) Every person licensed to practice as a Special Legal Consultant under this paragraph (4):

(a) Shall be subject to the Code of Professional Responsibility of the American Bar Association, as amended by the court, to the extent applicable to the legal services authorized under this paragraph (4), and shall be subject to censure, suspension, or revocation of his or her license to practice as a Special Legal Consultant by the court; and

(b) Shall execute and file with the clerk, in such form and manner as the court may prescribe:

(i) A written commitment to observe the Code of Professional Responsibility as referred to in subparagraph (E) (1) (a) of this paragraph (4);

(ii) an undertaking or appropriate evidence of professional liability insurance, in such amount as the court may prescribe, to assure the Special Legal Consultant's proper professional conduct and responsibility;

(iii) A duly acknowledged instrument in writing setting forth the Special Legal Consultant's address in the District of Columbia and designating the clerk of the court as his or her agent upon whom process may be served, with like effect as if served personally upon the Special Legal Consultant, in any action or proceeding thereafter brought against the Special Legal Consultant and arising out of or based upon any legal services rendered or offered to be rendered by the Special Legal Consultant within or to residents of the District of Columbia, whenever after due diligence service cannot be made upon the Special Legal Consultant at such address or at such new address in the District of Columbia as he or she shall have filed in the office of the clerk by means of a duly acknowledged supplemental instrument in writing; and

(iv) A written commitment to notify the clerk of the Special Legal Consultant's resignation from practice in the foreign country of his or her admission, or of any censure in respect of such admission, or of any suspension or revocation of his or her right to practice in such country.

(2) Service of process on the clerk pursuant to the designation filed as foresaid shall be made by personally delivering to and leaving with the clerk, or with a deputy or assistant authorized by the clerk to receive service, at the clerk's office, duplicate copies of such process together with a fee of $10.00. Service of process shall be complete when the clerk has been

so served. The clerk shall promptly send one of the copies to the Special Legal Consultant to whom the process is directed, by certified mail, return receipt requested, addressed to the Special Legal Consultant at the address given to the court by the Special Legal Consultant as aforesaid.

(3) In imposing any sanction authorized by subparagraph (E) (1) (a), the court may act sua sponte, on recommendation of the Board on Professional Responsibility, or on complaint of any person. to the extent feasible, the court shall proceed in a manner consistent with its Rules Governing the Bar of the District of Columbia.

(F) Affiliation with the District of Columbia Bar.

(1) A Special Legal Consultant licensed under this paragraph (4) shall not be a member of the District of Columbia Bar, provided, however, that a Special Legal Consultant shall be considered an affiliate of the Bar subject to the same conditions and requirements as are applicable to an active or inactive member of the Bar under the court's Rules Governing the Bar of the District of Columbia, insofar as such conditions and requirements may be consistent with the provisions of this paragraph (4).

(2) A Special Legal Consultant licensed under this paragraph (4) shall, upon being so licensed, take the following oath before this court, unless granted permission to take the oath in absentia:

> "I, ..., do solemnly swear (or affirm) that as a Special Legal Consultant with respect to the laws of ....., licensed by this court, I will demean myself uprightly and according to law."

(d) *Moral character and general fitness to practice law.* No applicant shall be certified for admission by the Committee until the applicant demonstrates good moral character and general fitness to practice law. The Committee may, in its discretion, give notice of the application by publication in a newspaper or by posting a public notice.

(e) *Quantum and burden or proof.* The applicant shall have the burden of demonstrating, by clear and convincing evidence, that the applicant possessed good moral character and general fitness to practice law in the District of Columbia.

(f) *Hearing by the Committee.*

(1) In determining the moral character and general fitness of an applicant for admission to the Bar, the Committee may act without requiring the applicant to appear before it to be sworn and interrogated. If the Committee is unwilling to certify an applicant, it shall notify the applicant of the choice of withdrawing the application or requesting a hearing. Notice shall be given by certified mail at the address appearing on the application. Within 30 days from the date of the notice, the applicant may file with the Committee a written request for a hearing. If the applicant fails to file a timely request for a hearing, the applicant's application shall be deemed withdrawn. If the applicant

requests a hearing within the 30-day period, the request shall be granted and the hearing shall be conducted by the Committee under the following rules of procedure:

(2) The Director shall give the applicant no less than 10 days' notice of:

(i) The date, time, and place of the hearing;

(ii) The adverse matters upon which the Committee relied in denying admission;

(iii) The applicant's right to review in the office of the Director those matters in the Committee file pertaining to the applicant's character and fitness upon which the Committee may rely at the hearing;

(iv) The applicant's right to be represented by counsel at the hearing, to examine and cross-examine witnesses, to adduce evidence bearing on moral character and general fitness to practice law and, for such purpose, to make reasonable use of the court's subpoena power.

(3) The hearing before the Committee shall be private unless the applicant requests that it be public. The hearing shall be conducted in a formal manner; however the Committee shall not be bound by the formal rules of evidence. It may, in its discretion, take evidence in other than testimonial form shall be taken in person at the hearing or by deposition. The proceedings shall be recorded and the applicant may order a transcript at the applicant's expense.

(4) If after the hearing the Committee is of the opinion that an adverse report should be made, it shall serve on the applicant a copy of the report of its findings and conclusions and permit the applicant to withdraw an application within 15 days after the date of the notice. The Committee may, in its discretion, extend this time. If the applicant elects not to withdraw, the Committee shall deliver a report of its findings and conclusions to the court with service on the applicant.

(g) *Review by the court.*

(1) The Committee shall deliver a report of its findings and conclusions to the court for its approval in the case of any applicant for admission after a formal hearing.

(2) After receipt of a Committee report, if the court proposes to deny admission, the court shall issue an order to the applicant to show cause why the application should not be denied. Proceedings under this Rule shall be heard by the court on the record made by the Committee on Admissions.

(3) Except for the review by the court provided in this section (g), no other review by the court of actions by or proceedings before the Committee shall be had except upon a showing (1) of extraordinary circumstances for instituting such review and (2) that an application for relief has previously been made in the first instance to the Committee and been denied by the Committee, or that an application to the Committee for the relief is not practicable.

(h) *Admission order.*

(1) The Committee shall file with the court a motion to admit the successful applicants by examination, or a certification of attorneys for admission without examination, after successful completion of a character and fitness study. Each candidate shall be notified of the time and place for the taking of the oath.

(2) An applicant whose name is on an order of admission entered by the court or who is certified for admission by the Committee without a formal hearing shall complete admission within 90 days from the date of the order or the certification by taking the oath prescribed and by signing the roll of attorneys in the office of the clerk.

(3) An applicant who fails to take the oath and sign the roll of attorneys within 90 days from the date of the admission order or the certification may file, within one year from the date of the order or certification, an affidavit with the Director explaining the cause of the delay. Upon consideration of the affidavit, the Committee may reapprove the applicant and file a supplemental motion with the court or may deny the applicant's admission and direct the applicant to file a new application for admission.

(i) *Oath.* An applicant admitted to the Bar of this court shall take the following oath before the court, unless granted permission to be admitted in absentia.

"I, _____ do solemnly swear (or affirm) that as a member of the Bar of this court, I will demean myself uprightly and according to law; and that I will support the Constitution of the United States of America." (Amended, Mar. 11, 1986; May 9, 1989, eff. Aug. 1, 1989; amended, eff. Apr. 1, 1991.)

Rule 47. Appearance and withdrawal of attorneys; self-representation.

(a) *Entry of appearance.* The filing by an attorney of any brief, motion, or other paper in a case before this court shall constitute the entry of an appearance by that attorney as counsel for the party on whose behalf the paper is filed. An attorney may also enter an appearance on a form provided by the clerk.

(b) *Withdrawal of appearance.* No attorney shall be permitted to withdraw an appearance without leave of court.

(c) *Self-representation.* Nothing in these rules shall be construed to prevent any person who is without counsel from prosecuting or defending an appeal in which that person is a party. The right to appear pro se does not include the right to appear on behalf of other parties to the same proceeding. (Amended, Dec. 23, 1988.)

Rule 48. Legal assistance by law students.

(a) *Practice.*

(1) An eligible law student may engage in the limited practice of law in the District of Columbia in connection with any civil case or matter (including any family and/or juvenile proceedings) and any criminal case or matter (not involving a felony) which may be pending in any court or any administrative tribunal of the District of Columbia, which by rule of such court or tribunal permits such appearance as a part of a "clinical program," as hereinafter defined, on behalf of any indigent person who has consented in writing to that appearance, provided that a "supervising lawyer," as hereinafter defined, has also indicated in writing approval of that appearance.

(2) An eligible law student may also appear in any criminal case or matter on behalf of the United States or the District of Columbia with the written approval of the United States Attorney or the Corporation Counsel or their authorized representatives and the "supervising lawyer."

(3) In each case the written consent and approval referred to above shall be filed in the record of the case.

(4) A "clinical program" for which such practice by an eligible law student is limited is a law school program for credit, held under the direction of a faculty member of such law school, in which a law student obtains practical experience in the operation of the District of Columbia legal system by participating in cases and matters pending before the courts or administrative tribunals.

(b) *Requirements and limitations.* To be eligible to make an appearance pursuant to this Rule, the law student must:

(1) Be enrolled in a law school approved by the American Bar Association and the Admissions Committee of this court.

(2) Have successfully completed legal studies amounting to at least 41 semester hours, or the equivalent if the school is on some basis other than a semester basis, including evidence and criminal and civil procedure.

(3) Be certified by the dean of the law school as being of good character and competent legal ability, and as being adequately trained to participate in cases or matters pending before the courts or administrative tribunals.

(4) Be certified by the Admissions Committee of this court as eligible to engage in the limited practice of law authorized by this Rule.

(5) Be registered with the Unauthorized Practice of Law Committee of this court.

(6) Neither ask for nor receive a fee of any kind for any services provided under this rule,

except that the payment of a regular salary to a law student who is also an employee of the United States or any agency thereof, the District of Columbia or any agency thereof, or the Public Defender Service shall not make that student ineligible under this rule.

(7) Certify in writing that the student has read and is familiar with the rules of this court governing the Bar of the District of Columbia, including the American Bar Association's Code of Professional REsponsibility which, pursuant to Rule X and Amendment A thereof, constitutes the standard governing the practice of law in the District of Columbia.

(c) *Certification.* The certification of a student by the law school dean:

(1) Shall be filed with the clerk of the court and, unless it is sooner withdrawn, it shall remain in effect until the expiration of one year after it is filed, or until the announcement of the results of the first bar examination given by the Admissions Committee of this court following the student's graduation, whichever is earlier. The certification may be continued in effect for any student who passes that examination until the student is either admitted by this court or denied admission to the Bar by the Admission Committee.

(2) May be withdrawn by the dean at any time by mailing a notice to that effect to the clerk. It is not necessary that the notice state the case for withdrawal.

(3) May be terminated by this court at any time without notice or hearing and without any showing of cause. Notice of the termination shall be filed with the clerk and a copy thereof sent to the law school dean of the particular student.

(d) *Other activities.*

(1) In addition to participating in pending cases and matters as provided in section (a) (1) of this Rule, an eligible student may engage in other activities of the "clinical program" under the general supervision, but outside the physical presence, of the supervising lawyer, including:

(i) Preparation of pleadings and other documents to be filed in any case or matter in which the student is eligible to participate, but such material must be signed by the supervising lawyer.

(ii) Preparation of briefs, abstracts and other documents to be filed in appellate courts of this jurisdiction, but such material must be signed by the supervising lawyer.

(iii) Each pleading, brief, or other document must contain the name of the eligible law student who has participated in drafting it. If the student participated in drafting only a portion of it, that fact may be mentioned.

(2) An eligible law student may participate in oral argument in this court in the presence of the supervising lawyer in any appeal, including felony and misdemeanor cases, provided that there is

filed with the clerk a written consent from the appellant to that appearance and the supervising lawyer indicates in writing approval of that appearance.

(e) *Supervision.* The "supervising lawyer" referred to in this Rule shall:

(1) Be a lawyer whose service as a supervising lawyer for the clinical program is approved by the dean of the law school in which the law student is enrolled.

(2) Assume full responsibility for guiding the student's work in any pending case or matter or other activity in which the student participates and for supervising the quality of that student's work.

(3) Assist the student in preparation of the case, to the extent necessary in the supervising lawyer's professional judgment to insure that the student's participation is effective on behalf of the indigent person represented.

(4) Be an "active" member of the District of Columbia Bar as set forth in the rules of this court governing the Bar of the District of Columbia. (Amended, Aug. 24, 1988.)

Rule 49. Unauthorized practice of law.

(a) *Committee on Unauthorized Practice of Law.*

(1) The court shall appoint a standing committee known as the Committee on Unauthorized Practice of Law consisting of at least six, and not more than twelve, members of the Bar of this court and of one resident of the District of Columbia who is not a member of the Bar. The Chairman and Vice Chairman shall be designated by the court. Each member shall serve for the term of three years and until their successors have been appointed. In case of vacancy caused by death, resignation or otherwise, a successor appointed shall serve the unexpired term of the predecessor member. When a member holds over after the expiration of the term for which appointed, the term the member serves after the expiration of the term for which the member was appointed shall be part of a new term. No member shall be appointed to serve longer than two consecutive regular three year terms.

(2) Subject to the approval of the court, the Committee shall adopt such rules and regulations as it deems necessary to carry out the provisions of this rule. The Committee may subpoena witnesses and documents upon application to the court by the Chairman or the Chairman's designee. The members of the Committee shall receive such compensation and necessary expenses as the curt may approve.

(b) *Practice of law in the District of Columbia.*

(1) No person shall regularly engage in the practice of law in the District of Columbia or in any manner hold out as authorized or qualified to practice law in the District of Columbia unless

enrolled as an active member of the Bar.

(2) No person, firm, association, bank or corporation shall, in the District of Columbia, advise or counsel any person on matters affecting legal rights, or practice or appear as an attorney at law for a person other than such person in any court, or furnish an attorney or attorneys to render legal services, or hold out to the public as being entitled to practice; or in any other manner assume to be an attorney at law, or assume, or use or advertise the title of lawyer, attorney or counselor, or any equivalent title, in such manner as to convey the impression that such person is entitled to practice law, or in any manner advertise that such person either alone or together with any other person or persons maintains an office for the practice of law in the District of Columbia, without being an enrolled active member of the Bar.

(3) The practice of law as used in this rule shall include, but is not limited to, appearing for any other person as attorney in any court, or preparing for any other person any deeds, mortgages, contracts, assignments, discharges, leases, trust instruments or any other instruments affecting real or personal property or any interest therein, or any wills, codicils, or any other instruments affecting the disposition of property of decedents' estates, or any pleadings of any kind in any action brought before any court, or preparing or expressing formal opinions or consulting with respect to any of the foregoing or on any other matters of law.

(c) *Exceptions.*

(1) Nothing herein shall prohibit a person who is a member in good standing of the highest court of any state but who is not an enrolled, active member of the Bar of this court (hereinafter "attorney") from appearing and participating in a particular action or proceeding in any court of the District of Columbia if a motion to appear pro hac vice has been granted by any such court provided, however, that the attorney shall not appear or participate in more than five actions or proceedings in any calendar year. Notwithstanding the foregoing, no person is eligible to appear pro hac vice pursuant to this rule if that person maintains an office for the practice of law in the District of Columbia, unless such person is eligible for admission to the District of Columbia Bar by waiver, D.C. App. R. 46 (c), and has pending an application for membership in the District of Columbia Bar. The fact that an attorney is associated with a law firm that maintains an office in the District of Columbia does not, of itself, establish that that attorney is maintaining an office in the District of Columbia. A person appearing pro hac vice as provided above shall pay a fee of $10 to the Clerk of this court each time that person seeks admission to appear pro hac vice. Proof of such payment shall accompany any pro hac vice motion. No such fee shall be required of any attorney employed by any agency of the United States government, the Office of the Corporation Counsel, the Public Defender Service, or of any attorney employed by or appearing under the auspices of any legal aid organization. Nothing herein shall restrict the right of anyone authorized by the Attorney General under § 517, Title 28, United States Code, to represent the United States in any proceeding in any court of the District of Columbia.

(2) Nothing herein shall prohibit any attorney employed by the United States or by any department, commission, or agency of the United States, from performing and carrying out the

duties and functions of the office, except to the extent that such duties include practice before a court of the District of Columbia, in which case such attorney shall either become an enrolled active member of the Bar of this court or obtain special permission therefor in accordance with paragraph (1) of section (c) of this rule.

(3) Nothing herein shall prohibit any attorney from appearing and participating in a particular action or proceeding before any court of the United States to the extent that such appearance and participating is authorized by any rule or order of such court, provided the person is not otherwise regularly engaged in the practice of law in the District of Columbia or is not in any manner holding out as authorized or qualified to practice law in the District of Columbia without having become an enrolled active member of the Bar of this court. This rule shall not be construed to repeal, supersede or modify any law or rule which relates to practice before any court of the United States.

(4) Nothing herein shall prohibit any attorney from practicing before any department, commission, or agency of the United States to the extent that such practice is authorized by any rule or regulation of any such department, commission or agency, provided the person is not otherwise regularly engaged in the practice of law in the District of Columbia or is not in any manner, except as permitted by the license granted by such department, commission, or agency, holding out as authorized or qualified to practice law in the District of Columbia without having become an enrolled active member of the Bar of this court. This rule shall not be construed to repeal, supersede or modify any law, rule or regulation which relates to practice before any department, commission or agency of the United States.

(5) Notwithstanding the provisions of subparagraph (b)(1) and (b)(2) of this rule, an enrolled inactive member of the Bar who is affiliated with a legal services or referral program may provide legal counsel in any matter that is handled without fee; provided, however, that if the matter requires the attorney to appear in court, the attorney shall file with the court having jurisdiction over the matter, and with this court's Committee on Unauthorized Practice, a certificate that the attorney is providing representation in that particular case without compensation.

(6) Nothing herein shall prohibit a corporation from appearing in defense of any small claims action through an authorized officer, director, or employee of the corporation provided however, that: (i) The corporation must be represented by an attorney if the corporation files a cross-claim or a counterclaim, (ii) the non-lawyer's appearance on behalf of the corporation shall be accompanied by an affidavit of a corporate officer vesting in the representative the requisite authority to bind the corporation in a settlement or trial. Proof of the non-lawyer's authority to bind the corporation shall be filed with the court at the time the representative's appearance is entered.

(7) Notwithstanding the provisions of subparagraphs (b)(1), (b)(2) and (c)(1) of this rule, an attorney who

(i) is a member in good standing of the highest court of any state, but who is not yet an enrolled, active member of the Bar of this court, and

(ii) has pending an application for membership in the District of Columbia Bar (whether for admission by examination or for admission without examination), and

(iii) is employed by or affiliated with a non-profit organization located in the District of Columbia that provides legal services for indigent clients without fee or for an nominal processing fee, or is employed by the Public Defender Service or the Office of the Corporation Counsel, shall be permitted to provide legal counsel in any matter that is undertaken for a indigent client without fee or for a nominal processing fee, or on behalf of the District of Columbia, and to appear an participate in particular actions or proceedings in any court of the District of Columbia in such matter, provided, however, that such attorney is supervised in such matter by an enrolled, active member of the Bar who is employed by or affiliated with the non-profit organization, the Public Defender Service, or the Office of the Corporation Counsel. An attorney practicing under this subparagraph shall be subject to the District of Columbia Rules of Professional Conduct and the enforcement procedures applicable thereto to the same extent as if he or she were an enrolled, active member of the District of Columbia Bar. An attorney may practice under this subparagraph for no longer than one year form the date of employment by or affiliation with the non-profit organization, the Public Defender Service, or the Office of the Corporation Counsel, or until his or her application for admission is granted or denied, whichever is earlier.

(d) *Penalties.* Violations of the foregoing provisions of this rule shall be punishable as contempt and/or subject to injunctive relief in a proceeding to be commenced by the Committee on Unauthorized Practice. Such proceedings shall be conducted before a judge of this court designated by the chief judge and shall be governed by the Rules of Superior Court of the District of Columbia which govern civil matters. These proceedings are subject to review in the usual appellate practice, by the filing, by either the petitioning Committee on Unauthorized Practice or the respondent, of a notice of appeal, with the clerk of this court within 10 days from the entry of the judgment by the hearing judge.

(e) *Rules of procedure.*

(1) Officers, members, and duties.

a. The Chairman shall preside at all meetings of the Committee; and in the Chairman's absence, the Vice Chairman shall preside.

b. The Chairman, Vice Chairman, and members shall investigate matters of alleged unauthorized practice of law and alleged violations of court rules governing same, and if warranted, the Committee shall take such actions as are provided in these rules.

c. In addition to the duties described in subparagraph b, supra, the Committee shall approve the legal programs identified in Rule 48.

d. A deputy clerk of this court shall be designated by the court to serve as Executive

Secretary to the Committee and shall provide such staff and secretarial services as may be needed.

(2) Meetings.

a. Any matter under investigation by the Committee shall remain confidential until a petition is filed with the court pursuant to Rule 49 (d)(1). So as to ensure this confidentiality, the Committee shall meet in executive session. At least eight meetings shall be called each year.

b. The Committee shall meet at the call of the Chairman. A special meeting of the Committee shall be held if a majority of its members request such a meeting by notifying the Executive Secretary.

c. Members who are unable to attend a meeting shall so notify the Chairman or the Executive Secretary at least two days in advance of the meeting.

d. The Chairman shall determine the order of business.

e. A quorum shall consist of four members, and all decisions shall be made by a majority of those members present and voting.

f. In extraordinary circumstances, as may be determined by the Chairman, a telephone vote of no less than four Committee members concurring in a decision shall constitute a Committee decision. Any such decision shall be recorded in the minutes of the next Committee meeting.

g. Minutes of all Committee meetings shall be prepared under the direction of the Executive Secretary, with copies of same furnished to all members of the Committee and to the chief judge or a judge designated by the chief judge.

(3) Investigation.

a. Whenever a complaint is filed with the Committee or upon its own volition, the matter shall be assigned by the Chairman, on a random basis, to a Committee member for preliminary investigation. This investigation shall consist of an analysis of the complaint, a survey of the applicable law, and discussions with witnesses and/or the respondent.

b. At the next regular meeting of the Committee, the Committee shall hear a report of the investigating member for the purpose of determining what action, if any, shall be taken by the Committee. Complaints shall be investigated and reported upon within six weeks. Delays shall be brought to the Chairman's attention by the Executive Secretary.

c. If the Committee concludes that formal proceedings are necessary to assist its determination, such may be held as specified in section (4) below.

(4) Formal proceedings.

a. To assist the Committee in performing its functions it may take sworn testimony of witnesses and/or the respondent.

b. Formal proceedings before the Committee shall be commenced by written notice to the respondent informing the respondent of the nature of the respondent's conduct which the Committee believes may constitute the unauthorized practice of law. the respondent shall be given 15 days to respond. Upon receipt of this response (or if no response is submitted), the matter shall be scheduled for a hearing. A copy of these rules and of Rule 49 shall also be transmitted to the respondent with the written notice.

c. The respondent may request permission to present evidence and witnesses in addition to the respondent's own testimony, but such proffers shall be allowed only in the discretion of the Committee. The respondent may be accompanied by counsel. The respondent and counsel shall not be present at the testimony of other witnesses called by the Committee. Formal rules of evidence shall not apply. The Chairman may apply to the court for issuance of a subpoena to any witness or to the respondent.

d. When appropriate, a post-hearing conference may be held between respondent and the investigation Committee member (or another Committee member designated by the Chairman) for the purpose of informing the respondent of the findings of the Committee and action it proposes.

(5) Actions by the Committee. During any stage of the investigation or formal proceedings the Committee may dispose of any matter pending before it by any of the following methods:

a. If no evidence of unauthorized practice is found, the matter shall be closed and the complainant notified.

b. If the respondent agrees to cease and desist from actions which appear to constitute the unauthorized practice of law, the matter may be closed by formal agreement, consent order, or both, with notification of such action given to the complainant. Such formal agreement or consent order may require restitution to the clients of fees obtained by the respondent.

c. If warranted, formal contempt proceedings may be initiated under Rule 49 (d)(1), provided, however, that action pursuant to this subsection is preceded by the formal proceedings specified in section (4) above.

d. The Committee may also refer cases to the Office of the United States Attorney for investigation and possible prosecution.

(6) Closed files. Upon the closing of a file by the Committee, the file shall be retained in the records of the court. (Amended, Sept. 12, 1985; Dec. 23, 1988; Nov. 22, 1989; May 21, 1992.)

Rule 50. Employees not to practice law.

Neither the clerk nor any of the clerk's deputies, nor anyone serving as a law clerk or secretary to a judge of this court, or employed in any other capacity by this court, shall engage in the practice of law while continuing in such position; nor shall any such person after separating from that position practice as an attorney in connection with any case which was pending in this court during that person's term of service, nor shall that person's name appear on a brief filed in connection with any such case.

Rule 51. Judicial Conference of the District of Columbia.

(a) *Purpose.* In accordance with § 11-744 of the D.C. Code there shall be held annually, at such time and place as shall be designated by the chief judge of this court, a conference of all the active judges of this court and the active judges of the Superior Court of the District of Columbia, for the purpose of considering the state of business of the courts and advising ways and means of improving the administration of justice within the District of Columbia. It shall be the duty of each judge summoned to attend the conference and, unless excused by the chief judge of this court, to remain throughout the conference. The conference shall be called the Judicial Conference of the District of Columbia.

(b) *Composition.* In addition to the active judges of this court and the Superior Court of the District of Columbia, invited participants of the conference who shall have voting privileges shall consist of the following:

(1) The retired judges of this court and of the Superior Court.

(2) The clerks of this court and of the Superior Court.

(3) The Executive Officer of the District of Columbia Courts.

(4) The United States Attorney for the District of Columbia.

(5) The Corporation Counsel for the District of Columbia.

(6) The deans of local law schools (ABA approved).

(7) The President and President-Elect of the District of Columbia Bar.

(8) The Presidents and Presidents-Elect of the voluntary bar associations of the District of Columbia.

(9) Members of the Bar of the court and representatives of the District of Columbia administration of justice system in such numbers as will promote the purpose of this rule as defined

in section (a). Selection of the members pursuant to this subsection shall be subject to the approval of this court.

(10) The following officials shall be invited annually as guests of the Conference:

(i) The Chief Judges of the United States Court of Appeals for the District of Columbia Circuit and of the United States District Court for the District of Columbia.

(ii) The Clerks of the United States Court of Appeals for the District of Columbia Circuit and of the United States District Court for the District of Columbia.

(iii) The Circuit Executive of the District of Columbia Circuit.

(c) *Pre-conference arrangements.* The chief judge of this court shall appoint a Committee on Arrangements for the Conference consisting of at least one active judge of this court and one active judge of the Superior Court and one member of the Bar. The Committee shall:

(1) Prepare and submit for the approval of the Board of Judges of this court a plan for the conference to include:

(i) Location.

(ii) Program of professional matters to be covered during the Conference.

(iii) Coordination of arrangements in instances where the Judicial Conference is to be held jointly with a Bar activity.

(2) Carry out such other tasks relative to the Conference as may be assigned by the chief judge of this court.

(d) *Conference procedures.*

(1) The chief judge of this court shall preside at the meetings of the Judicial Conference and the meetings shall be conducted in accordance with Robert's Rules of Order.

(2) The chief judge of this court may appoint such committees as may be appropriate, including those committees authorized by the Conference or determined by the chief judge to be necessary to implement its actions, and may fill vacancies in or reconstitute such committees.

(3) The clerk of this court shall serve as Secretary to the Conference and shall make and preserve an accurate record of its proceedings.

Rule 52. Cases involving constitutional questions where United States is not a party.

It shall be the duty of a party who draws in question the constitutionality of an Act of Congress in any proceeding in this court to which the United States, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, upon the filing of the record, or as soon thereafter as the question is raised in this court, to give immediate notice in writing to the court of the existence of said question. The clerk shall thereupon certify such fact to the Attorney General.

Rule 53. Cases involving District of Columbia statutes or regulations where the District of Columbia government is not a party.

It shall be the duty of a party who contends that an enactment of the Council of the District of Columbia is unconstitutional or invalid under the District of Columbia Self-Government and Reorganization Act, as amended, in any proceedings in this court to which the District of Columbia, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, upon the filing of the record, or as soon thereafter as the question is raised in this court, to give immediate notice in writing to the court of the existence of said contention. The clerk shall thereupon certify such fact to the Corporation Counsel of the District of Columbia. For purposes of this rule, the District of Columbia shall not be considered a party to the proceedings unless represented by the Corporation Counsel.

Rule 54. Certification of questions of law.

(a) Upon certification of a question of law to this court pursuant to D.C. Code § 11-723 (1987 Supp.), counsel who is not a member of the Bar of this court shall within twenty days of the date of certification comply with the provisions of Rule 49 (c)(1).

(b) (1) Within thirty days of the date of the certification order, counsel shall file with the clerk of this court statements (joint or separate) indicating whether the certification and accompanying papers are deemed adequate to enable the court to decide the certified question.

(2) The clerk promptly thereafter shall assign a regularly selected division of the court to decide the question and any related matters.

(3) If for any reason the court determines that additional record from the certifying court or further briefs are needed, the clerk, upon directions of the court, shall request counsel or the certifying court, or both, to provide what is needed.

(4) The court may order oral argument.

(c) The question certified shall be deemed answered twenty-one days after the court's opinion is filed with the clerk unless the time is shortened or extended by order. The clerk shall send a certified copy of the opinion to the certifying court unless otherwise ordered by the court.

(d) The provisions of Rule 40 shall apply. The timely filing of a petition for rehearing or rehearing en banc will stay the transmittal of the opinion to the certifying court unless otherwise ordered by the court. (Added, Sept. 23, 1987.)

SCHEDULE OF FEES AND COSTS

(a) Filing notice of appeal in trial court $5
(b) Filing application for allowance of appeal, small claims and criminal (less than $50 penalty) .. 5

(c) Filing petition for review 50

(d) Filing and docketing record on appeal or preliminary record in appeals of right 50

(e) For filing original motions, applications or petitions 50

(f) Copying any record or other papers, per page ..... .50
(g) For certifying a printed record where no copying is required, per page ..... .05

(h) For a copy of each slip opinion of this Court 2

(i) Yearly subscription to court opinions 200

(j) For receiving, keeping, and paying money, in pursuance of any order of this Court, 1 per cent of the amount so received, kept and paid.

(k) For filing motion to docket and dismiss appeal by appellee ..... No fee

(l) For filing application for interlocutory appeal ... No fee

If appeal granted see (d)

(m) Preparing record for Supreme Court including certificate and seal 5

(n) For affixing a certificate and seal to any paper 1

(o) For certificate of good standing 5

(p) For engraved certificate evidencing admission to the Bar 30

(q) For taking oath and signing roll 2

(r) Filing application for interlocutory appeal 25

(s) For filing any motion in a case 10